



Local Government Act 1993



Local Government Act 1993

An Act to provide for local government and establish councils to plan for, develop and manage municipal areas in the interests of their communities

[Royal Assent 23 December 1993]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the Local Government Act 1993 .

2. Commencement

This Act commences on a day or days to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

absolute majority means –

- (a) if no councillors are suspended, more than half of the number of councillors to be elected to a council; or
- (b) if one or more councillors are suspended, more than half of the number of councillors to be elected to a council after subtracting the number of councillors who are suspended;

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the Resource Management and Planning Appeal Tribunal Act 1993 ;

approved means approved by the Tasmanian Electoral Commission;

assets, for the purpose of Parts 3 and 12A and section 226A , includes –

- (a) any real or personal property; and
- (b) any estates or interests in any real or personal property; and
- (c) any rights, obligations or liabilities;

audit panel means the audit panel established under section 85 ;

authorised person means a person authorised under section 20A ;

ballot material means –

- (a) a ballot paper; and
- (b) instructions for the completion of the ballot paper and the manner in which the ballot paper is to be returned; and
- (c) the envelope or envelopes to be used for the return of the ballot paper; and
- (d) statements of candidates;

Board means the Local Government Board established under section 210 ;

Board of Inquiry means a Board of Inquiry established under section 215 ;

by-election means a by-election held under Division 9 of Part 15 ;

by-laws means by-laws made by a council under Part 11 ;

candidate means a person whose nomination for an election under Part 15 has been accepted under section 272 ;

certificate of election means a certificate issued under section 304 ;

chief executive officer means, in relation to a single authority or joint authority, the person responsible for the administration and operation of that authority;

close associate means a person referred to in section 51 ;

closing day means the day referred to in section 268A ;

code of conduct means the model code of conduct as adopted by a council under section 28T , as amended or substituted from time to time under that section;

code of conduct complaint means a complaint made under section 28V and, where appropriate, includes a part of such a complaint;

Code of Conduct Panel means the Code of Conduct Panel established under section 28K ;

community means the community of a municipal area;

competitive neutrality principles means the national competition policy competitive neutrality principles referred to in clause 3 of the Competition Principles Agreement made between the Commonwealth, the States and the Territories;

controlling authority means an authority established under section 29 ;

council means a council established under section 18 ;

council committee means a council committee established under section 23 ;

councillor means a person elected to a council and includes the Lord Mayor, Deputy Lord Mayor, mayor, deputy mayor and alderman;

declaration of a poll means a declaration under section 303 ;

deputy mayor includes the Deputy Lord Mayor;

Director means the Director of Local Government appointed under section 334 ;

Director, MPES means the Director, Monetary Penalties Enforcement Service appointed under section 8 of the Monetary Penalties Enforcement Act 2005 ;

election agent means a person authorised by the candidate to act as his or her agent in connection with the candidate's campaign for election;

elector means a person entitled to vote in an election or by-election under Part 15 ;

elector poll means a poll conducted under Part 6 ;

electoral advertising means any advertising, by any of the following means, that is directly or indirectly in respect of a campaign for election by a candidate or intending candidate:

- (a) any notice, sign or poster;
- (b) any pamphlet or handbill;
- (c) any "how-to-vote" card;
- (d) any print medium;
- (e) any broadcast by radio or television;
- (f) on the internet;

electoral area means the municipal area or electoral district in which an election is to be held;

Electoral Commissioner means the person holding that office under the Electoral Act 2004 ;

electoral district means an electoral district referred to in section 17 ;

electoral material means –

- (a) ballot papers; and
- (b) declarations under section 284 ;

electoral officer means a person appointed as such under section 265 ;

electoral officer in charge means an electoral officer appointed under section 265(2) to be in charge of an issuing place;

electoral roll means a roll kept under section 258 ;

Executive Officer means the Executive Officer appointed under section 28M ;

financial year means a period of 12 months starting on 1 July in one year and ending on 30 June in the next year;

general manager means the person appointed as such under section 61 and, in Part 15 , includes a person nominated under section 253A ;

GST law has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth;

intending candidate means a person who has publicly declared the intention to nominate for an election under Part 15 ;

issuing place means a place appointed under section 263 ;

joint authority means an authority established under section 30 ;

legal practitioner means an Australian legal practitioner;

list of electors means the list prepared under section 261 ;

mayor includes the Lord Mayor;

member means –

- (a) a member of a special committee or a controlling authority; and
- (b) a person representing a single authority council or a joint authority council on a single authority or a joint authority; and
- (c) a member of the board of management of a single authority or a joint authority;

model code of conduct means a model code of conduct made by the Minister under section 28R , as amended or substituted under that section from time to time;

municipal area means an area referred to in section 16 and, in Part 15 , includes a proposed municipal area;

nomination period means the period beginning at 9 a.m. on the 8th Monday immediately before the closing day and ending at noon on the 6th Monday immediately before the closing day;

notice of election means the notice of election under section 269 ;

ordinary election means an election under Part 15 that is not a by-election;

participating council means a council that, together with one or more councils, establishes a joint authority;

partner means a partner within the meaning of the Relationships Act 2003 ;

performance improvement direction means a direction issued to a council or councillor under section 214M ;

polling period means a period of at least 10 days, excluding any Saturday, Sunday or statutory holiday as defined in the Statutory Holidays Act 2000 , ending on closing day;

proposed municipal area means a municipal area that is to come into existence as a result of an order under section 214E ;

public land means public land as specified in section 177A(1) ;

public office means –

- (a) in the case of a municipal area, the place at which a council carries on its administrative activities; or

(b) in the case of a proposed municipal area, the place at which a council or councils of that proposed municipal area carry out their administrative activities;

rateable land means land in respect of which rates are payable;

rates notice means a notice referred to in section 122 ;

regulations means the regulations made under this Act;

relevant period means the period starting on the 30th day before the date of notice of election and ending at the end of the polling period;

returning officer means a person appointed as such under section 264 ;

review means a review carried out by the Board under Part 12A ;

roll closure day means the day on which the electoral roll for an electoral area is closed under section 260 ;

scrutineer means a person appointed as such under section 292 ;

simple majority means the majority of councillors of a council present and able to vote at a meeting of the council or council committee;

single authority means an authority established under section 30 ;

single authority council means a council that establishes a single authority;

special committee means a special committee established under section 24 ;

Tasmanian Electoral Commission means the Tasmanian Electoral Commission established by section 6 of the Electoral Act 2004 ;

vehicle means a vehicle within the meaning of the Traffic Act 1925 and a bicycle;

PART 2 -

Division 1 -

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Division 2 -

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Division 3 -

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PART 3 - Local Government

Division 1 - Municipal areas and electoral districts

16. Municipal areas

- (1) The State is divided into municipal areas.
- (2) A municipal area is an area specified in Column 1 of Schedule 3 .
- (3) A municipal area includes –
 - (a) any accretion from the sea adjoining it; and
 - (b) any part of the sea-shore to the low-water mark adjoining it; and
 - (c) any bridge, jetty, wharf, boat-house, or other structure, that –
 - (i) adjoins the municipal area; or
 - (ii) is situated partly within a municipal area and partly on or over an area of the seabed that is adjacent to the municipal area –

and any area of land, adjoining the bridge, jetty, wharf, boat-house, or other structure, over which has been granted a right to occupation of the seabed, which right is necessary to enable the use of the bridge, jetty, wharf, boat-house, or other structure.
- (4) The Minister, on receiving a report on a review made under section 214D that recommends an adjustment of the boundary of a municipal area or the boundary of an electoral district within a municipal area, regardless of whether the adjustment is minor or significant in nature, may recommend to the Governor that an order be made so adjusting that boundary.
- (4A) The Minister –
 - (a) on receiving –
 - (i) from the Board, made otherwise than in a report on a review made under section 214D ; or
 - (ii) from the Director –

a recommendation that an adjustment, that is minor in nature, be made to the boundary of a municipal area, or the boundary of an electoral district within a municipal area; and
 - (b) if satisfied that all owners of land who would be affected by the adjustment have been consulted by the relevant councils and have consented, in writing, to the adjustment –

may recommend to the Governor that an order be made so adjusting that boundary.
- (5) The Governor, by order and on the recommendation of the Minister under subsection (4) or (4A) , may do one or both of the following:
 - (a) adjust a boundary of a municipal area;
 - (b) if the municipal area is divided into electoral districts, adjust any boundary of any electoral district as may be necessary.
- (5A) A council affected by an adjustment under subsection (5) is to pay the costs associated with that adjustment.
- (5B) Each municipal area is defined by reference to the relevant plan or plans specified in Column 1 of Schedule 3.
- (6) The Governor, on the recommendation of the Minister, may amend or substitute any item in column 1 of Schedule 3 or substitute that Schedule in an order made under section 214E relating to municipal areas to give effect to that order.

16A. Cities

- (1) A city is an area specified in column 1 of Schedule 3B .
- (2) The name of each city is specified in column 2 of Schedule 3B .
- (3) A city is defined by reference to the relevant plan specified in column 3 of Schedule 3B .
- (4) The Governor, on the recommendation of the Minister, may amend or substitute any item in column 1, 2 or 3 of Schedule 3B or substitute that Schedule in an order made under section 214E relating to cities to give effect to that order.

17. Electoral districts

- (1) A municipal area may be divided into 2 or more electoral districts.
- (2) The name of each electoral district of a municipal area is specified in column 4 of Schedule 3 .
- (3) The Governor, on the recommendation of the Minister, may amend, substitute or delete any item in column 4 or 5 of Schedule 3 in an order made under section 214E relating to electoral districts to give effect to that order.

Division 2 - Councils

18. Establishment of councils

- (1) There is established in each municipal area a council.
- (2) The name of each council in a municipal area is specified in column 2 of Schedule 3 next to the name of that municipal area.
- (3) A meeting of a council is to be conducted in accordance with prescribed procedures.
- (4) The Governor, on the recommendation of the Minister, may amend or substitute column 2 of Schedule 3 or substitute that Schedule in an order made under section 214E relating to councils to give effect to that order.

19. Corporation of councils

- (1) A council is a body corporate with perpetual succession and a common seal.
- (2) The corporate name of a council –
 - (a) in a municipal area in which there is a city, is to contain the name of the city or the name of the municipal area; or
 - (b) in a municipal area which is not a city, is to contain the name of the municipal area.
- (3) The common seal is to be kept and used as authorized by the council.
- (4)
- (5) The execution of a document sealed by a council is to be attested by such persons as the council determines.
- (6) All courts and persons acting judicially must take judicial notice of the common seal on a document and presume that it was duly sealed by a council.

20. Functions and powers

- (1) In addition to any functions of a council in this or any other Act, a council has the following functions:
 - (a) to provide for the health, safety and welfare of the community;
 - (b) to represent and promote the interests of the community;
 - (c) to provide for the peace, order and good government of the municipal area.
- (2) In performing its functions, a council is to consult, involve and be accountable to the community.

- (3) A council may do anything necessary or convenient to perform its functions either within or outside its municipal area.
- (4) A council may transfer to a single authority or a joint authority –
 - (a) any of its assets and liabilities on any condition it determines; or
 - (b) any of its employees.
- (5) A council may –
 - (a) acquire, hold, dispose of and otherwise deal with property; and
 - (b) sue and be sued in its corporate name.

20A. Powers of entry

- (1) In order that a council may perform its functions or exercise its powers under this or any other Act, the general manager may authorise a person to enter land for a specific purpose or in general.
- (2) An authorised person need not be an employee of a council.
- (3) The general manager must give notice to the owner or occupier of the land before entry is made under subsection (1) unless –
 - (a) an emergency exists; or
 - (b) the entry is in relation to an application by the owner or occupier for a licence, permit or other approval given by the council; or
 - (c) notice would defeat the purpose of the entry.
- (4) A person entering land under this section is to produce the identity card issued to that person under section 20B .
- (5) The general manager may revoke an authority under this section.

20B. Identity card

- (1) The general manager is to ensure that a person authorised to enter land pursuant to section 20A is issued with an identity card.
- (2) An identity card is to –
 - (a) specify the name of the person; and
 - (b) contain a recent photograph of the person; and
 - (c) specify the date of issue; and
 - (d) specify the council or agent of the council that employs the person.
- (3) A person whose authority is revoked under section 20A(5) must return his or her identity card to the general manager within 3 days of the revocation.

Penalty: Fine not exceeding 10 penalty units.

21. Enterprise powers

- (1) In carrying out any of its functions, a council may –
 - (a) form or participate in the formation and operation of a corporation, trust, partnership or other body; and
 - (b) subscribe for, or otherwise acquire and dispose of, shares in or debentures or other securities of a corporation; and
 - (c) become a member of a company limited by guarantee; and
 - (d) subscribe for, or otherwise acquire and dispose of, units in a trust; and

- (e) acquire and dispose of an interest in a partnership or other body; and
- (f) enter into partnership or into any arrangement for sharing of profits, union of interest, cooperation, joint venture, reciprocal concession or otherwise, with any person carrying on, or engaged in, or about to carry on or engage in, any business or transaction capable of being conducted so as to directly or indirectly benefit the community; and
- (g) undertake a project or activity not directly authorized by this or another Act for the purpose of raising revenue.

(1A) A motion by a council to exercise any of its powers under subsection (1) must be accompanied by a statement of the objectives of the exercise of that power.

(2) A council must obtain the approval of the Minister before exercising any of its powers under subsection (1) if the exercise of that power would –

- (a) involve an expenditure of at least \$250 000 or 5% or more of its general rates revenue for the previous financial year, whichever is the greater; or
- (b) extend the council's expenditure required to service its total borrowings to an amount in excess of 30% of its revenue other than grants made to the council for the previous financial year.

(3) Before giving an approval, the Minister may require a council to –

- (a) invite submissions from the public or conduct an elector poll in relation to the proposed exercise of any power; and
- (b) consider any submissions and the result of an elector poll; and
- (c) provide any further information the Minister requires.

(4) A council may exercise any power under subsection (1) outside the boundaries of its municipal area if that exercise is consistent with the competitive neutrality principles.

(5) The general manager is to report to the council –

- (a) at least once every 3 months in respect of the performance of any activities carried out pursuant to subsection (1) and any strategic issues related to those activities; and
- (b) any adverse developments that significantly affect or are likely to significantly affect the financial viability, the operating viability or any other aspect of any of those activities.

22. Delegation by council

(1) Subject to subsection (2), a council, in writing, may delegate with or without conditions to the general manager, controlling authority, a council committee or a special committee, any of its functions or powers under this or any other Act, other than–

- (a) this power of delegation, unless authorized by the council; and
- (b) the powers referred to in subsection (3).

(2) A council, in writing, may delegate any of the following powers only to the general manager or a council committee and only on condition that the council has determined appropriate policies and procedures to be followed in relation to those powers:

- (a) the collection of rates and charges under Part 9 ;
- (ab) the postponement of rates and charges;
- (b) the remission or rebate of rates and charges;
- (ba) the writing off of any debts owed to the council;
- (c) the making of grants or the provision of benefits.

(3) A council must not delegate any of its powers relating to the following:

- (a) the borrowing of money or other financial accommodation;
 - (b) the determination of the categories of expenses payable to councillors and any member of any committee;
 - (c) the establishment of council committees, special committees, controlling authorities, single authorities or joint authorities;
 - (d) the revision of the budget or financial estimates of the council;
 - (e) the revision of the strategic plan and the annual plan of the council;
 - (f) the appointment of the general manager;
 - (fa) the sale, donation, exchange or other disposal of land or public land;
 - (fb) the decision to exercise any power under section 21(1) ;
 - (g) the making of by-laws;
 - (h) the making of rates and charges under Part 9 ;
 - (i) any other prescribed power.
- (4) The general manager is to –
- (a) keep a register of any delegation; and
 - (b) make the register available for inspection at a public office.

23. Council committees

- (1) A council may establish, on such terms as it thinks fit, council committees to assist it in carrying out its functions under this or any other Act.
- (2) A council committee consists of councillors appointed by the council and any councillor who fills a vacancy for a meeting at the request of the council committee.
- (3) A meeting of a council committee is to be conducted in accordance with prescribed procedures.

24. Special committees

- (1) A council may establish, on such terms and for such purposes as it thinks fit, special committees.
- (2) A special committee consists of such persons appointed by the council as the council thinks appropriate.
- (3) The council is to determine the procedures relating to meetings of a special committee.

Division 3 - Councillors

25. Constitution of council

- (1) A council consists of persons elected in accordance with Part 4 .
- (2) A person elected to a city council is a councillor but may be known as an alderman.
- (3) The number of councillors for each council is specified in column 3 of Schedule 3 next to the name of that council.
- (4) The Governor, on the recommendation of the Minister, may amend or substitute column 3 of Schedule 3 in an order made under section 214E relating to councils to give effect to that order.
- (5) Schedule 5 has effect with respect to the office of councillor.

26. Mayors and deputy mayors

- (1) The chairperson of a council is to be known as –
 - (a) in the case of the Hobart City Council or its successor, the Lord Mayor; and

(b) in the case of any other council, the mayor.

(2) The deputy chairperson of the council is to be known as –

(a) in the case of the Hobart City Council or its successor, the Deputy Lord Mayor; and

(b) in the case of any other council, the deputy mayor.

27. Functions of mayors and deputy mayors

(1) The functions of a mayor are–

(a) to act as a leader of the community of the municipal area; and

(b) to carry out the civic and ceremonial functions of the mayoral office; and

(c) to promote good governance by, and within, the council; and

(d) to act as chairperson of the council and to chair meetings of the council in a manner that supports decision-making processes; and

(e) to act as the spokesperson of the council; and

(f) to represent the council on regional organisations and at intergovernmental forums at regional, state and federal levels; and

(g) to lead and participate in the appointment, and the monitoring of the performance, of the general manager; and

(h) to liaise with the general manager on –

(i) the activities of the council and the performance and exercise of its functions and powers; and

(ii) the activities of the general manager and the performance and exercise of his or her functions and powers in supporting the council; and

(i) any function imposed by an order under section 27A ; and

(j) any other function imposed by this or any other Act.

(aa)

(ba)

(1A) The mayor or deputy mayor is to represent accurately the policies and decisions of the council in performing the functions of mayor or deputy mayor.

(2) The deputy mayor is to act in the position of mayor and exercise the powers and perform the functions of mayor if–

(a) the mayor is absent from duty as Mayor or from the State, otherwise unavailable for duty as mayor or unable to perform the functions of mayor; and

(b) the mayor or the council, by notice in writing, appoints the deputy mayor to act in the position.

(2A) The mayor, by notice in writing, may delegate for a specified period –

(a) either or both of the functions referred to in subsection (1)(e) and (f) to the deputy mayor, a councillor or the general manager; and

(b) any other power or function of the mayor, other than the function referred to in subsection (1)(d) , to the deputy mayor.

(3) An appointment under subsection (2) remains in force –

(a) for the period specified in the notice; or

(b) until sooner revoked.

27A. Order relating to Mayor's functions

- (1) The Minister, by order, may do any one or more of the following:
 - (a) clarify the functions of mayor;
 - (b) impose on mayors such functions as the Minister considers appropriate.
- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.
- (4) An order under this section may be combined with an order under one or more of the following sections:
 - (a) section 28AA ;
 - (b) section 62A ;
 - (c) section 62B .
- (5) Section 47(3) , (3A) , (4) , (5) , (6) and (7) of the Acts Interpretation Act 1931 applies to an order under this section as if the order were regulations within the meaning of that Act.
- (6) An order under this section is subordinate legislation for the purposes of the Subordinate Legislation Act 1992 .

28. Functions of councillors

- (1) A councillor, in the capacity of an individual councillor, has the following functions:
 - (a) to represent the community;
 - (b) to act in the best interests of the community;
 - (c) to facilitate communication by the council with the community;
 - (d) to participate in the activities of the council;
 - (e) to undertake duties and responsibilities as authorised by the council.
- (2) The councillors of a council collectively have the following functions:
 - (a) to develop and monitor the implementation of strategic plans and budgets;
 - (b) to determine and monitor the application of policies, plans and programs for –
 - (i) the efficient and effective provision of services and facilities; and
 - (ii) the efficient and effective management of assets; and
 - (iii) the fair and equitable treatment of employees of the council;
 - (c) to facilitate and encourage the planning and development of the municipal area in the best interests of the community;
 - (d) to appoint and monitor the performance of the general manager;
 - (e) to determine and review the council's resource allocation and expenditure activities;
 - (f) to monitor the manner in which services are provided by the council.
- (3) In performing any function under this Act or any other Act, a councillor must not –
 - (a) direct or attempt to direct an employee of the council in relation to the discharge of the employee's duties; or
 - (b) perform any function of the mayor without the approval of the mayor.
- (4) A councillor is to represent accurately the policies and decisions of the council in performing the functions of councillor.

28AA. Order relating to functions of councillors

- (1) The Minister, by order, may clarify the functions of councillors.
- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.
- (4) An order under this section may be combined with an order under one or more of the following sections:
 - (a) section 27A ;
 - (b) section 62A ;
 - (c) section 62B .
- (5) Section 47(3) , (3A) , (4) , (5) , (6) and (7) of the Acts Interpretation Act 1931 applies to an order under this section as if the order were regulations within the meaning of that Act.
- (6) An order under this section is subordinate legislation for the purposes of the Subordinate Legislation Act 1992 .

28A. Information and documents relating to functions

- (1) A councillor, in writing, may request the general manager to make available any information or document or a copy of any information or document in the possession of the council that may be required for the purpose of performing any of the councillor's functions.
- (2) A councillor who makes a request under subsection (1) is to –
 - (a) state in writing the relevance of the information or document to any of the councillor's functions; and
 - (b) declare that he or she would not have, or would be unlikely to have, any pecuniary interest in the matter to which the information or document relates if the matter were to be an item on the agenda of a meeting of the council or a council committee.
- (3) The general manager may refuse the request of a councillor if –
 - (a) the general manager believes that the request would unreasonably extend the resources of the council; or
 - (b) the councillor has declared an interest under section 48 ; or
 - (c) the councillor has failed or refused to make a declaration under subsection (2)(b) ; or
 - (d) the general manager considers that the information or document requested is not required for the purpose of performing any of the councillor's functions.
- (4) If the general manager refuses the request the general manager is to advise the councillor in writing, stating the reasons for the refusal.
- (5) The general manager is to make any information or document made available to a councillor under this section available to any other councillor on request.

28B. Requirement to make information and documents available

- (1) A councillor may seek a decision of the council to require the general manager to make information or a document available if the general manager has refused a request under section 28A .
- (2) Subsection (1) does not apply to any information or document that, if made available, may disclose information relating to the personal affairs of any person.
- (3) The general manager is to comply with a requirement made as a result of a decision by the council.

28C. Confidentiality undertaking

- (1) If the general manager considers that the information or document is confidential, the general manager may require the councillor to whom the information or document is to be made available to give an undertaking to keep it confidential.

(2) If a councillor refuses or fails to give the undertaking, the general manager may refuse to make the information or document available to the councillor.

28D. Documents relating to agendas

(1) A councillor, on request, is entitled to be provided with a copy of any document, or information, in the possession of the council that relates directly to an item on the agenda of a meeting of the council or a council committee.

(2) A request –

(a) is to be in writing; and

(b) is to specify the document, or information, by name or title or subject matter.

(3) The general manager is to make any document, or information, that is provided to a councillor under this section available to any other councillor on request.

(4) If the general manager considers that a document, or information, is confidential, the general manager may require the councillor to whom the document, or information, is to be provided to give an undertaking to keep it confidential.

(4A) If the general manager considers that –

(a) a document, or information, requested by a councillor contains private and confidential information relating to a person; and

(b) that private and confidential information is not relevant to an item on the agenda of a meeting of the council or a council committee –

the general manager may provide the document, or information, after redacting or otherwise removing that private and confidential information.

(5) The general manager may refuse to provide the councillor with a document, or information, if the councillor –

(a) has declared an interest under section 48 in relation to a matter covered by the document or information; or

(b) refuses or fails to give the undertaking under subsection (4) .

(6) The general manager may refuse to provide the councillor with a document, any information or a part of a document or information, if the general manager considers that the document, information or part is not relevant to an item on the agenda of a meeting of the council or a council committee.

(7) If the general manager under subsection (4A) has provided a document, or information, to a councillor after redacting or otherwise removing any private or confidential information the council may direct the general manager to provide the document, or information, to the councillor without redacting or otherwise removing any information from it.

(8) If the general manager under subsection (6) has refused to provide a document, any information or a part of a document or information to a councillor, the council may direct the general manager –

(a) to provide the document, information or part to the councillor without redacting or otherwise removing any information from it, information or part under subsection (4A) ; or

(b) to determine under subsection (4A) whether any information in the document, information or part should be redacted or otherwise removed, and then to provide the document, information or part to the councillor, whether with or without any information being so redacted or removed.

(9) The general manager is to comply with a direction of the council given under subsection (8) .

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28J. Incapacity

- (1) A prescribed person may apply to a magistrate for an order that a councillor is unable to perform or exercise adequately or competently the functions or powers of a councillor due to the physical or mental incapacity of the councillor.
- (2) The magistrate may –
 - (a) grant the order; or
 - (b) refuse to grant the order.
- (3) If the magistrate grants the order –
 - (a) the councillor is removed from office with effect from the date of the order; and
 - (b) the office of the councillor is vacant as at that date.

Division 3A - Code of conduct, complaints and complaint resolution

Subdivision 1 - Code of Conduct Panel and Executive Officer

28K. Code of Conduct Panel

- (1) The Code of Conduct Panel is established.
- (2) The Minister is to appoint as members of the Code of Conduct Panel as many of the following persons as the Minister considers appropriate:
 - (a) Australian lawyers;
 - (b) persons who have experience in local government but who are not councillors or employees of any council and have not been such councillors or employees within the immediately preceding 2 years.
- (3) Before appointing persons to be members of the Code of Conduct Panel, the Minister may give notice, in any manner he or she considers appropriate, that persons interested in being members may provide written expressions of interest to the Minister.
- (4) Schedule 2A applies in relation to the members of the Code of Conduct Panel.
- (5) The instrument of appointment of a member of the Code of Conduct Panel may include conditions of appointment that are not inconsistent with Schedule 2A .

28L. Constitution of Code of Conduct Panel

- (1) In the investigation and determination of a code of conduct complaint against a councillor, the Code of Conduct Panel is to be constituted by 3 members selected by the Executive Officer of whom –
 - (a) one is to be an Australian lawyer; and
 - (b) 2 are to be persons who have experience in local government.

(2) The chairperson of the Code of Conduct Panel is a person referred to in subsection (1)(b) who is appointed as chairperson by the Executive Officer.

28M. Executive Officer

(1) The Secretary of the Department, on behalf of the Crown, is to appoint a person as Executive Officer in relation to the Code of Conduct Panel.

(2) If the Secretary of the Department appoints a State Service officer or a State Service employee as Executive Officer, the following provisions apply:

(a) that officer or employee may hold a position or office under the State Service Act 2000 in conjunction with the office of Executive Officer;

(b) the State Service Act 2000 does not apply in relation to the office of Executive Officer;

(c) that officer or employee is not entitled to receive any remuneration as Executive Officer.

(3) The Executive Officer is appointed for the term, and on the conditions, specified in his or her instrument of appointment.

28N. Functions of Executive Officer

The Executive Officer has the following functions:

(a) administrative functions in relation to the Code of Conduct Panel;

(b) the functions specified in his or her instrument of appointment;

(c) other functions prescribed by this Act;

(d) other functions determined by the Minister.

28O. Payment of remuneration and allowances to members of Code of Conduct Panel and Executive Officer

(1) In this section –

State-employed Executive Officer means an Executive Officer who is also a State Service officer or State Service employee.

(2) A member of the Code of Conduct Panel is entitled to receive the remuneration and allowances determined by the Minister from time to time.

(3) The remuneration and allowances payable under subsection (2) to a member of the Code of Conduct Panel in relation to a code of conduct complaint and its investigation and determination are payable by the relevant council.

(4) An Executive Officer –

(a) who is not a State-employed Executive Officer is entitled to receive the remuneration and allowances determined by the Minister from time to time; or

(b) who is a State-employed Executive Officer is entitled to receive only the allowances determined by the Minister from time to time.

(5) The remuneration and allowances payable under subsection (4) to an Executive Officer in relation to a code of conduct complaint and its investigation and determination are payable by the relevant council.

(6) In the case of a State-employed Executive Officer, the remuneration that would be payable to an Executive Officer in relation to a code of conduct complaint were he or she not a State-employed Executive Officer is payable –

(a) to the government department in or for which the State-employed Executive Officer is employed in his or her capacity as a State Service officer or State Service employee; and

(b) by the relevant council.

28P. Requesting provision of information

(1) Each of the following persons may request, in writing, the Code of Conduct Panel or Executive Officer to provide information and documents relating to the performance of its or his or her functions as specified in the request:

- (a) the Minister;
- (b) the Secretary of the Department;
- (c) the Director;
- (d) the Board.

(2) The Code of Conduct Panel or Executive Officer is to comply with a request made under subsection (1) .

28Q. Providing information to Code of Conduct Panel

If a person is required to, or may, provide a document to the Code of Conduct Panel or the chairperson of the Code of Conduct Panel, the person may provide it to either the Panel or the Executive Officer.

Subdivision 2 - Code of conduct

28R. Model code of conduct

- (1) The Minister, by order, is to make a model code of conduct relating to the conduct of councillors.
- (2) The Minister, by order, may amend or revoke and substitute the model code of conduct.
- (3) The Minister is to make a copy of the model code of conduct available to each council as soon as practicable after the model code of conduct is made, amended or revoked and substituted.

28S. Contents of model code of conduct

(1) The model code of conduct as made, amended or substituted under section 28R must be consistent with this Act and is to provide for the following matters:

- (a) what constitutes a conflict of interest for a councillor and the procedure to be followed if a councillor has a conflict of interest;
- (b) the proper and improper use by a councillor of his or her office with the council;
- (c) the proper and improper use by a councillor of council resources;
- (d) the proper and improper use by a councillor of information obtained in his or her office with the council;
- (e) the right of a councillor to receive gifts and benefits and the procedure to be followed by a councillor when receiving gifts and benefits in the situations specified in the model code of conduct;
- (f) the appropriate or inappropriate behaviour of a councillor in his or her relationships with the community, other councillors and council employees;
- (g) the proper and improper manner in which a councillor represents himself or herself as a councillor, and represents the council, to the community;
- (h) any prescribed matter.

(2) The model code of conduct may provide for any other matter relating to the conduct of councillors that the Minister considers appropriate and is consistent with this Act.

28T. Code of conduct

- (1) Within 3 months after the day on which an order under section 28R(1) takes effect, each council must adopt the model code of conduct, either with or without any variations permitted under subsection (3) , as its code of conduct relating to the conduct of its councillors.
- (2) Within 3 months after the Minister makes available to councils an amendment to the model code of conduct or a substitute model code of conduct, a council must adopt the amendment, or revoke its code of conduct and

adopt the substitute model code of conduct as its code of conduct, either with or without variations permitted under subsection (3) .

(3) In adopting the model code of conduct, an amendment to the model code of conduct or a substitute model code of conduct, a council may vary the model code of conduct, amendment or substitute model code of conduct in any manner that is allowed by the model code of conduct, amendment or substitute model code of conduct, is approved by the Minister or is prescribed.

(4) A variation of the model code of conduct, an amendment to the model code of conduct or a substitute model code of conduct is to be set out in a schedule to the model code of conduct, the model code of conduct as amended or the substitute model code of conduct.

(5) Within 14 days after adopting the model code of conduct, an amendment to the model code of conduct or a substitute model code of conduct, a council is to provide a copy of it to the Director.

(6) The general manager is to make a copy of the council's code of conduct available –

(a) for public inspection, free of charge, at the public office of the council during ordinary office hours and on its website; and

(b) for purchase at a reasonable charge.

(7) A council is to review its code of conduct within 3 months after each ordinary election.

28U. Compliance with code of conduct

In performing the functions and exercising the powers of his or her office with a council, a councillor is to comply with the provisions of the council's code of conduct.

Subdivision 3 - Complaints against councillors

28V. Making code of conduct complaint against councillor

(1) A person may make a complaint against one councillor in relation to the contravention by the councillor of the relevant council's code of conduct.

(2) A person may make a complaint against more than one councillor in relation to the contravention by the councillors of the relevant council's code of conduct if all the councillors complained against behaved on a particular occasion in such a manner as to commit the same alleged contravention of the code of conduct.

(3) A complaint is to –

(a) be in writing; and

(b) state the name and address of the complainant; and

(c) state the name of each councillor against whom the complaint is made; and

(d) state the provision of the relevant code of conduct that the councillor has allegedly contravened; and

(e) contain details of the behaviour of each councillor that constitutes the alleged contravention; and

(f) be lodged with the general manager of the relevant council within 6 months after the councillor or councillors against whom the complaint is made allegedly committed the contravention of the code of conduct; and

(g) be accompanied by any prescribed fee.

(4) If the subject matter of a complaint by its nature consists of a series of separate incidents that, taken together, form the subject matter, the period referred to in subsection (3)(f) runs from the most recent of the incidents mentioned in the complaint.

(5) A complaint may not be made by more than 2 complainants jointly.

28W. Withdrawal of or from code of conduct complaint

- (1) All complainants in a code of conduct complaint, jointly, may withdraw the complaint, at any time before the complaint has been determined by the Code of Conduct Panel, by notice in writing provided to the general manager or the Code of Conduct Panel.
- (2) If a code of conduct complaint is made by 2 complainants, one of those complainants may withdraw from the complaint, at any time before the complaint has been determined by the Code of Conduct Panel, by notice in writing provided to the general manager or the Code of Conduct Panel.
- (3) If a notice withdrawing a code of conduct complaint, or withdrawing from a code of conduct complaint, is provided to the general manager after the complaint has been referred to the Code of Conduct Panel, the general manager is to notify the Executive Officer, in writing, of the withdrawal.
- (4) On becoming aware of a notice withdrawing a code of conduct complaint or a notice withdrawing from a code of conduct complaint, the Code of Conduct Panel is to notify the following persons, in writing, of the withdrawal:
 - (a) the general manager, unless the notice was originally provided to him or her under subsection (3) ;
 - (b) if the councillor against whom the complaint is made has been notified of the complaint, the councillor.

28X. Amendment of code of conduct complaint

- (1) A complainant, in writing provided to the general manager or the Code of Conduct Panel, may amend a code of conduct complaint at any time before the Code of Conduct Panel commences an investigation into the complaint.
- (2) If the Code of Conduct Panel has commenced its investigation into a code of conduct complaint, a complainant may amend the complaint with the consent of the Code of Conduct Panel.
- (3) If a notice amending a code of conduct complaint is provided to the general manager after the complaint has been referred to the Code of Conduct Panel, the general manager is to notify the Executive Officer, in writing, of the amendment.
- (4) On becoming aware of an amendment to a code of conduct complaint, the Code of Conduct Panel is to notify the following persons, in writing, of the amendment:
 - (a) the general manager, unless the complainant provided the amendment to the general manager;
 - (b) if the councillor against whom the complaint is made has been notified of the complaint, the councillor.

28Y. Initial assessment of complaint by general manager

- (1) On receiving a code of conduct complaint, a general manager is to assess the complaint to determine whether it meets the requirements of section 28V .
- (2) Subsection (1) does not apply if the general manager is the complainant.
- (3) If the general manager determines that the code of conduct complaint does not meet the requirements of section 28V , he or she is to return the complaint to the complainant and notify the complainant, in writing –
 - (a) that the complaint does not meet the requirements of section 28V for the reasons set out in the notice; and
 - (b) that the complainant may lodge an amended or substituted complaint without payment of a further fee under section 28V(3)(g) –
 - (i) within the period specified in section 28V for lodging a code of conduct complaint; or
 - (ii) if the complaint is returned to the complainant after the end of that period or less than 14 days before the end of that period, within 14 days after receiving the returned complaint.

28Z. Referral of code of conduct complaint by general manager

- (1) On receiving a code of conduct complaint and after determining, if required to do so, that the complaint meets the requirements of section 28V , the general manager –
 - (a) if the complaint is against less than half of all the councillors of the council, is to refer the complaint to the Code of Conduct Panel by providing it to the Executive Officer; and
 - (b) if the complaint is against one half or more of all the councillors of the council, is to refer the complaint to the Director.
- (2) If a code of conduct complaint is referred to the Director, the Director is to determine whether he or she accepts or refuses to accept the referral and is to notify the general manager of that determination within 28 days after receiving the referral.
- (3) If the Director fails to notify the general manager as required by subsection (2) , the Director is taken to have accepted the referral of the code of conduct complaint.
- (4) If the Director accepts the referral of the code of conduct complaint –
 - (a) the complaint is taken to be a complaint made to the Director under section 339E and ceases to be a code of conduct complaint; and
 - (b) the Director is to proceed under that section in relation to the complaint.
- (5) If the Director refuses to accept the referral of the code of conduct complaint, the general manager, as soon as practicable, is to refer the complaint to the Code of Conduct Panel by providing it to the Executive Officer.
- (6) If a code of conduct complaint is referred to the Code of Conduct Panel, the Executive Officer is to –
 - (a) keep the original complaint or a copy of it; and
 - (b) in accordance with section 28L , constitute the Code of Conduct Panel to investigate the complaint and appoint the chairperson of the Panel; and
 - (c) provide a copy of the complaint to the chairperson.

28ZA. Initial assessment of code of conduct complaint by chairperson of Code of Conduct Panel

- (1) On receiving a code of conduct complaint, the chairperson of the Code of Conduct Panel is to do an initial assessment of the complaint to determine whether to do one or more of the following:
 - (a) dismiss the whole complaint;
 - (b) dismiss part of the complaint;
 - (c) refer the whole complaint to another person or authority;
 - (d) refer part of the complaint to another person or authority;
 - (e) determine that the whole complaint is to be investigated and determined by the Code of Conduct Panel;
 - (f) determine that part of the complaint is to be investigated and determined by the Code of Conduct Panel.
- (2) The initial assessment is to be completed within such period as will enable the chairperson of the Code of Conduct Panel to comply with subsection (3) .
- (3) Within 28 days after receiving the code of conduct complaint, the chairperson of the Code of Conduct Panel –
 - (a) is to notify the complainant and the general manager, in writing, of the result of the initial assessment and the reasons for it; and
 - (b) if the chairperson has determined that the whole or part of the complaint is to be investigated and determined by the Code of Conduct Panel, is to –
 - (i) notify the councillor against whom the complaint is made, in writing, of the result of the initial assessment and the reasons for it; and

(ii) provide a copy of the complaint to that councillor; and

(iii) provide a copy of the complaint to the other members of the Code of Conduct Panel.

28ZB. Dismissal of code of conduct complaint on initial assessment

(1) The chairperson of the Code of Conduct Panel, on an initial assessment, may dismiss the code of conduct complaint, or part of it, if he or she considers that –

(a) the complaint or part is frivolous or vexatious; or

(b) the complaint or part does not substantially relate to a contravention of the code of conduct of the relevant council; or

(c) the complainant has made the complaint or part in contravention of –

(i) a determination of the chairperson made under subsection (2) ; or

(ii) a determination of the Code of Conduct Panel made under section 28ZI(3) .

(2) If the chairperson of the Code of Conduct Panel dismisses the code of conduct complaint or part of it on the basis that it is frivolous or vexatious, the chairperson, in the notice provided under section 28ZA(3) , may direct the complainant not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

28ZC. Referral of code of conduct complaint on initial assessment

(1) The chairperson of the Code of Conduct Panel, on an initial assessment, may refer the code of conduct complaint, or part of it, to any person or other authority that the chairperson considers appropriate if the chairperson reasonably considers that –

(a) the complaint discloses that an offence may have been committed; or

(b) the complaint would be more appropriately dealt with by that other person or authority.

(2) The person or other authority to which the code of conduct complaint is referred –

(a) may accept the referral or refuse to accept the referral; and

(b) is to notify the chairperson of the Code of Conduct Panel of that acceptance or refusal within 28 days after receiving the referral.

(3) If the person or other authority to whom the code of conduct complaint is referred fails to notify the chairperson of the Code of Conduct Panel as required by subsection (2) , the person or authority is taken to have accepted the referral of the code of conduct complaint.

(4) If the person or other authority to whom the code of conduct complaint is referred accepts the referral, the code of conduct complaint ceases to be a code of conduct complaint.

(5) If the person or other authority to which the code of conduct complaint is referred refuses to accept the referral, the chairperson of the Code of Conduct Panel is to do a further initial assessment under section 28ZA within 21 days after being notified of that refusal.

(6) On doing a further initial assessment under section 28ZA as required by subsection (5) –

(a) the chairperson is to comply with section 28ZA as if doing a first initial assessment; and

(b) if the chairperson determined on the original initial assessment to investigate a part of the code of conduct complaint and had notified the councillor against whom the complaint was made of that determination, the chairperson is to notify the councillor of the result of the further initial assessment in addition to any other notice the chairperson is required to provide under section 28ZA .

28ZD. Time for investigating and determining code of conduct complaint

(1) The Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint –

(a) if the chairperson of the Panel has determined under section 28ZA to investigate and determine the whole complaint, within 90 days after that determination; or

(b) if the chairperson of the Panel has determined under section 28ZA to investigate and determine part of the complaint but to refer to a person or other authority another part of the complaint, within 120 days after that determination.

(2) If the Code of Conduct Panel is unable to investigate and determine a code of conduct complaint, or part of a code of conduct complaint, within the period specified in subsection (1) , the Panel is to include the reasons for that in its written determination made in accordance with section 28ZJ .

28ZE. Conduct of investigations generally

(1) In the investigation of a code of conduct complaint, the Code of Conduct Panel –

(a) is to conduct the investigation with as little formality, and as expeditiously, as is reasonably practicable in the particular circumstances; and

(b) is not bound by the rules of evidence and may inform itself on any matter in any manner it considers appropriate; and

(c) must observe the rules of natural justice; and

(d) may regulate its own procedure.

(2) In the investigation of a code of conduct complaint, the Code of Conduct Panel may –

(a) determine what evidence is required to enable it to determine the complaint; and

(b) subject to subsection (3) , determine the manner in which it will accept evidence from the complainant, the councillor against whom the complaint is made and any witnesses.

(3) In an investigation of a code of conduct complaint, the Code of Conduct Panel may accept evidence given orally on oath or affirmation or by written submissions and documents provided in, or annexed to, a statutory declaration.

(4) At any time during an investigation of a code of conduct complaint, the Code of Conduct Panel, in writing, may request the complainant, the councillor against whom the complaint is made, a witness or the relevant council to provide information and documents, or further information and documents (including information, and documents containing information, of a kind referred to in section 338A), that the Panel considers may be relevant to the determination of the complaint.

(5) A person who has been requested under subsection (4) to provide information and documents, or further information and documents, is to do so within –

(a) the period specified in the request; or

(b) such longer period as the Code of Conduct Panel, before the expiration of the period specified in the request, may allow.

(6) If a council or a councillor in response to a request under subsection (4) provides to the Code of Conduct Panel information, or a document containing information, of a kind referred to in section 338A , a member of the Code of Conduct Panel must not disclose that information or document to any person except as otherwise allowed by sections 28ZJ and 28ZK .

28ZF. Investigation of multiple code of conduct complaints against same councillor or multiple councillors

(1) If there are a number of code of conduct complaints against the same councillor or different councillors of the same council and the complaints relate to the same contravention of the council's code of conduct, the Code of Conduct Panel may determine to conduct a joint investigation into all the complaints.

(2) The Code of Conduct Panel may only make a determination to conduct a joint investigation after considering the wishes of all complainants and councillors against whom the complaints are made.

- (3) If the Code of Conduct Panel determines under subsection (1) to conduct a joint investigation and the total number of councillors involved in the investigation is half or more of all the councillors of the relevant council, the Panel is to refer the complaints to the Director.
- (4) If the Code of Conduct Panel refers the code of conduct complaints to the Director, the Director is to determine whether he or she accepts or refuses to accept the referral and is to notify the Panel of that determination within 28 days after receiving the referral.
- (5) If the Director fails to notify the Code of Conduct Panel as required by subsection (4) , the Director is taken to have accepted the referral of the code of conduct complaints.
- (6) If the Director accepts the referral of the code of conduct complaints –
 - (a) the complaints are taken to be complaints made to the Director under section 339E and cease to be code of conduct complaints; and
 - (b) the Director is to proceed under that section in relation to the complaints.

28ZG. When hearing is to be held

- (1) Except as provided by subsection (2) , the Code of Conduct Panel is to conduct the investigation of a code of conduct complaint by means of a hearing.
- (2) The Code of Conduct Panel may determine that a code of conduct complaint may be investigated without a hearing if it reasonably considers that –
 - (a) neither the complainant nor the councillor against whom the complaint is made will be disadvantaged if a hearing is not held and it is appropriate in the circumstances not to hold a hearing; or
 - (b) a hearing is unnecessary in the circumstances because the investigation can be adequately conducted by means of written submissions or examination of documentary evidence, or both.
- (3) If the Code of Conduct Panel determines not to hold a hearing, the members of the Panel may participate in a meeting of the Panel by telephone, television conference, written communication or any other means of communication approved by the Panel.
- (4) At any time after the Code of Conduct Panel has determined not to hold a hearing, the Panel may determine to hold a hearing in relation to the code of conduct complaint as a whole or to part of the code of conduct complaint.

28ZH. Hearings

- (1) Subject to this Act, the Code of Conduct Panel may regulate the procedure of its hearings.
- (2) A hearing –
 - (a) is to take the form of an inquiry by the Code of Conduct Panel into the matters raised in the code of conduct complaint that are in dispute; and
 - (b) is not to be adversarial.
- (3) At a hearing, witnesses may be called by the complainant, the councillor against whom the complaint is made and the Code of Conduct Panel.
- (4) Evidence at a hearing is to be taken by the Code of Conduct Panel –
 - (a) on oath or affirmation; and
 - (b) subject to a requirement of the Code of Conduct Panel under subsection (5) , may be given orally or in writing.
- (5) The Code of Conduct Panel may require a person, by written notice, to attend a hearing and give evidence in person or provide documents, or both.
- (6) If the Code of Conduct Panel consents, a complainant or councillor against whom the code of conduct complaint is made may be represented at a hearing by an advocate who is not an Australian lawyer.

(7) A hearing is closed to the public.

28ZI. Determination of code of conduct complaint

(1) After completing its investigation of a code of conduct complaint, the Code of Conduct Panel is to determine the complaint by –

- (a) upholding the complaint; or
- (b) dismissing the complaint; or
- (c) upholding part of the complaint and dismissing the remainder of the complaint.

(2) If the code of conduct complaint or part of it is upheld, the Code of Conduct Panel may impose one or more of the following sanctions on the councillor against whom the complaint is made:

- (a) a caution;
- (b) a reprimand;
- (c) a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;
- (d) a requirement to attend counselling or a training course;
- (e) a suspension from performing and exercising the functions and powers of his or her office as a councillor for a period not exceeding 3 months.

(3) If the code of conduct complaint or part of it is dismissed, the Code of Conduct Panel may determine that the complainant may not make a further complaint in relation to the same matter for a period not exceeding 12 months unless the complainant provides substantive new information in the further complaint.

28ZJ. Determination report

(1) The determination of a code of conduct complaint by the Code of Conduct Panel under section 28ZI is to be in writing and is to contain –

- (a) a summary of the complaint; and
- (b) the determination of the Code of Conduct Panel; and
- (c) the Code of Conduct Panel's reasons for the determination; and
- (d) if the code of conduct complaint or part of it is upheld and the Code of Conduct Panel has imposed a sanction on a councillor, that sanction and a reasonable period within which the councillor is to comply with the sanction; and
- (e) if the code of conduct complaint or part of it is dismissed and the Code of Conduct Panel determines under section 28ZI(3) that the complainant may not make a further complaint in relation to the same matter, a direction to the complainant to that effect; and
- (f) a statement that a person aggrieved by the determination of the Code of Conduct Panel is entitled, under section 28ZP, to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the ground that the Panel has failed to comply with the rules of natural justice.

(2) The determination of a code of conduct complaint must not contain any information of a kind referred to in section 338A but, if the Code of Conduct Panel considers that any such information is relevant to the report and should be included, it is to include that information in an addendum to the report.

28ZK. Notification of determination of code of conduct complaint

(1) In this section –

addendum means an addendum to a determination report referred to in section 28ZJ(2) ;

determination report means the written determination of a code of conduct complaint by the Code of Conduct Panel as required by section 28ZJ without any addendum.

(2) Within 28 days after determining a code of conduct complaint, the Code of Conduct Panel is to provide a copy of its determination report to –

- (a) each complainant; and
- (b) each councillor against whom the complaint is made; and
- (c) the general manager of the relevant council; and
- (d) the Director.

(3) If the Code of Conduct Panel has produced an addendum, it is to provide a copy of it to –

- (a) if the complainant is a councillor, that complainant; and
- (b) each councillor against whom the complaint is made; and
- (c) the general manager of the relevant council; and
- (d) the Director.

(4) If the general manager receives a determination report but no addendum, the general manager is to ensure that a copy of the determination report is tabled at the first meeting of the relevant council at which it is practicable to do so and which is open to the public.

(5) If the general manager receives a determination report and also an addendum, the general manager is to ensure –

- (a) that a copy of the determination report without the addendum is tabled at the first meeting of the relevant council at which it is practicable to do so and which is open to the public; and
- (b) that a copy of the determination report with the addendum is tabled at the first meeting of the relevant council at which it is practicable to do so and which is closed to the public.

28ZL. Effect of third suspension

(1) In this section –

prescribed period, in relation to a councillor, means –

- (a) the councillor's current term of office; or
- (b) if the councillor is serving the second of 2 consecutive terms of office as a councillor (whether both those terms are with the same council or with different councils), the period consisting of both those terms of office;

third suspension means the third, or a subsequent, suspension of a councillor imposed by the Code of Conduct Panel under section 28ZI(2)(e) in relation to code of conduct complaints (whether in relation to a contravention of the same provision or different provisions of a code of conduct, or of the same or a different code of conduct) during the prescribed period.

(2) If the Code of Conduct Panel imposes a third suspension on a councillor, the Panel is to notify the Minister of –

- (a) that suspension; and
- (b) the details of each suspension of the councillor during the prescribed period, including details of the provisions of the code of conduct contravened and a summary of the behaviour constituting each of those contraventions.

(3) On receipt of a notice provided under subsection (2) , the Minister may remove the councillor from office.

28ZM. Councillor to comply with sanction imposed for contravention of code of conduct

(1) In this section –

determination report means the written determination of a code of conduct complaint by the Code of Conduct Panel as required by section 28ZJ .

(2) If, when determining a code of conduct complaint, the Code of Conduct Panel imposes a sanction on a councillor that requires the councillor to apologise to a person or to attend counselling or a training course, the councillor must comply with that sanction within the period specified in the determination report.

Penalty: Fine not exceeding 50 penalty units.

(3) Within 7 days after a councillor has fully complied with a sanction referred to in subsection (2) , the councillor is to notify the general manager that he or she has done so.

(4) If a councillor fails to comply with a sanction referred to in subsection (2) within the period specified in the determination report, the relevant general manager is to notify the Director, in writing, of that fact.

(5) On receipt of a notice provided under subsection (4) , the Director is to deal with the notice as if it were a complaint under section 339E .

28ZN. Costs of parties relating to code of conduct complaint

The complainant in a code of conduct complaint and the councillor against whom the complaint is made are to bear their own costs relating to the investigation and determination of the complaint.

28ZO. Refund of fee accompanying lodgement of code of conduct complaint

A council must refund to each complainant who has lodged a code of conduct complaint, in equal shares, any fee paid with the lodgement in accordance with section 28V(3)(g) in any of the following circumstances:

- (a) the complaint is referred to the Director by the general manager under section 28Z(1)(b) and is accepted by the Director;
- (b) the whole complaint is referred to a person or other authority by the chairperson of the Code of Conduct Panel on initial assessment under section 28ZA(1)(c) and is accepted by that person or authority;
- (c) the whole complaint is withdrawn at any time before it is referred by the general manager to the Code of Conduct Panel under section 28Z(1) ;
- (d) the complaint or part of the complaint is upheld on determination by the Code of Conduct Panel;
- (e) all councillors against whom the complaint is made resign or lose the office of councillor before the complaint is dealt with as specified in paragraph (a) , (b) , (c) or (d) , as the case requires.

Subdivision 4 - Reviews of Code of Conduct Panel decisions

28ZP. Review of Code of Conduct Panel decision

If a person is aggrieved by the determination of a code of conduct complaint by the Code of Conduct Panel on the ground that the Panel failed to comply with the rules of natural justice –

- (a) the person may apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on that ground; and
- (b) that determination is a reviewable decision for the purposes of the Magistrates Court (Administrative Appeals Division) Act 2001 .

Division 4 - Authorities

29. Controlling authorities

(1) A council may establish a controlling authority with the following functions:

- (a) to carry out any scheme, work or undertaking on behalf of the council;
- (b) to manage or administer any property or facilities on behalf of the council;
- (c) to provide facilities or services on behalf of the council;

(d) to carry out any other functions on behalf of the council.

(2) A council may make provision for –

- (a) the membership of a controlling authority; and
- (b) the term of office and remuneration of members of a controlling authority; and
- (c) the proceedings of a controlling authority; and
- (d) the powers of a controlling authority; and
- (e) the rules for the conduct of the business of a controlling authority.

(3) A council may remove a person from membership of a controlling authority by resolution of the council.

(4) A liability incurred by a controlling authority may be enforced against a controlling authority or the council by which it was established.

(5) A council may abolish a controlling authority.

(6) If a controlling authority is abolished, its rights and liabilities vest in the council which abolished it.

(7) The establishment of a controlling authority under this section does not affect the powers of the council to act in any matter.

30. Single and joint authorities

(1) A council, by a resolution of an absolute majority, may resolve to establish –

- (a) a single authority; or
- (b) a joint authority with one or more other councils.

(2) A single authority or joint authority may be established –

- (a) to carry out any scheme, work or undertaking; and
- (b) to provide facilities or services; and
- (c) to perform any function or exercise any power of a council under this or any other Act.

(3)

31. Notice of proposed authority

(1) A council that decides to establish a single authority or one of the councils that decides to establish a joint authority is to –

- (a) publish a notice at least once in a daily newspaper circulating in the relevant municipal area; and
- (b) display a notice in a conspicuous place in its public office from the date on which the notice is first published until the date specified in the notice.

(2) A notice is to specify the following:

- (a) the purpose of the proposed authority;
- (b) the membership of the proposed authority;
- (c) that a copy of the proposed rules of the authority is open for inspection at the public office;
- (d) that a copy of the proposed rules may be purchased at a specified price at the public office;
- (e) that written submissions in respect of the authority may be lodged with the general manager of one of the participating councils;
- (f) the date until which –
 - (i) a copy of the proposed rules may be inspected or purchased; and
 - (ii) submissions may be made.

- (3) A date specified under subsection (2)(f) is to be at least 21 days after a notice is first published.
- (4) The general manager, as soon as practicable after the notice is first published, must make available –
 - (a) a copy of the proposed rules –
 - (i) to the Director; and
 - (ii) for inspection by the public; and
 - (b) copies of the proposed rules for purchase at a price not exceeding the approximate cost of printing the rules.
- (5)

32. Approval and certification of rules

- (1) After considering any submissions lodged under section 31 and making any alterations to the proposed rules of a proposed single authority or joint authority, a council may approve the proposed rules.
- (2) The general manager of one of the participating councils is to cause a copy of the rules approved under subsection (1) to be certified by a legal practitioner as being in accordance with the law.
- (3) A council must not approve any proposed rules unless the rules have been certified by –
 - (a) a legal practitioner to be in accordance with the law; and
 - (b) the general manager of one of the participating councils to have been made in accordance with this Act.
- (4) The general manager of one of the participating councils is to provide the Director with a copy of –
 - (a) the rules approved under subsection (1) ; and
 - (b) any subsequent amendment to those rules.

32A. Amendment of rules

The provisions of sections 31 and 32 apply to any amendment of rules of a single authority or joint authority.

33. Notice of establishment of authority

- (1) After approving the proposed rules under section 32 , a council, by notice in the *Gazette*, may –
 - (a) establish a single authority or joint authority; and
 - (b) determine the name by which the authority is to be known.
- (2) The notice is to state –
 - (a) that the authority is established on a specified date; and
 - (b) the name of the authority; and
 - (c) the membership of the authority, if it is a joint authority; and
 - (d) the purpose for which the authority is established.

34. Body corporate

- (1) A single authority or joint authority is a body corporate with perpetual succession and a common seal.
- (2) The common seal is to be kept and used as authorised by the rules of the single authority or joint authority.
- (3) The execution of a document sealed by a single authority or joint authority is to be attested in accordance with the rules of the authority.
- (4) All courts and persons acting judicially must take judicial notice of the common seal on a document and presume that it was duly sealed.

35. Functions and powers of authority

A single authority or joint authority may –

- (a) acquire, hold, dispose of or otherwise deal with property; and
- (b) sue and be sued in its corporate name; and
- (c) perform any function or exercise any power specified in this Act or any other Act or in its rules.

35A. Adverse developments

A single authority or joint authority must notify as soon as practicable the single authority council or participating councils of any development which, in its opinion, may –

- (a) significantly affect the financial viability or operating ability of the authority; or
- (b) otherwise significantly affect the authority in an adverse manner.

36. Operating outside municipal areas

(1) A single authority or joint authority may perform its functions and exercise its powers outside the boundaries of the municipal area or areas of the relevant single authority council or participating councils if –

- (a) the rules of the authority permit; and
- (b) that exercise is in accordance with the competitive neutrality principles.

(2) Subsection (1) does not apply to regulatory powers and powers of entry under this or any other Act.

36A. Annual reports of authorities

(1) A single authority or joint authority must submit an annual report to the single authority council or participating councils.

(2) The annual report of a single authority or joint authority is to include –

- (a) a statement of its activities during the preceding financial year; and
- (b) a statement of its performance in relation to the goals and objectives set for the preceding financial year; and
- (c) the financial statements for the preceding financial year; and
- (d) a copy of the audit opinion for the preceding financial year; and
- (e) any other information it considers appropriate or necessary to inform the single authority council or participating councils of its performance and progress during the financial year.

36B. Quarterly reports of authorities

(1) A single authority or joint authority must submit to the single authority council or participating councils a report as soon as practicable after the end of March, June, September and December in each year.

(2) The quarterly report of the single authority or joint authority is to include –

- (a) a statement of its general performance; and
- (b) a statement of its financial performance.

37. Winding-up

(1) A single authority may be wound up –

- (a) by the council by absolute majority; or
- (b) by the Minister as a result of an inquiry under Part 13 .

(2) A joint authority may be wound up –

- (a) by the Minister as a result of an inquiry under Part 13 ; or
- (b) on the decision of the majority of participating councils; or

(c) if there are only 2 participating councils, by both councils.

(3) The winding-up of a single authority or joint authority is to be notified in the *Gazette* by the council or one of the participating councils.

38. Rules of authorities

(1) The rules of a single authority or joint authority are to provide for the following:

- (a) the membership of the authority;
- (b) the proceedings of the authority;
- (c) financial contributions to the authority by the relevant single authority council or participating councils;
- (d) the specific functions and specific powers of the authority;
- (da) the setting of goals and objectives of the authority;
- (e) the rules of conduct of the business of the authority;
- (f) the manner in which assets of the authority are to be distributed in the event of it being wound up;
- (g) the manner in which any dividend is to be paid;
- (h) the withdrawal of a participating council from membership of the joint authority;
- (i) the proportions in which the participating councils are to be responsible for the liabilities of a joint authority in the event of its insolvency;
- (j)
- (k) the keeping and use of the common seal;
- (l) the attestation of execution of documents;
- (m) any other prescribed matter.

(2) In the case of a single authority or joint authority to which Part 3A applies, the rules are to –

- (a) be consistent with the requirements of the corporatisation model for government business enterprises referred to in the Competition Principles Agreement made between the Commonwealth, the States and the Territories; and
- (b) provide for the following:
 - (i) dividends payable by the authority in respect of the results of the financial transactions of the authority during each financial year;
 - (ii) the method by which payments received from the Treasurer and comptroller under Part 3A are to be distributed between participating councils;
 - (iii) the method by which a comptroller is to be appointed for the purposes of Part 3A and the requirements for that appointment;
 - (iv) the matters referred to in subsection (3)(a) and (b) .

(3) The rules may provide for the following:

- (a) a board of management to perform specified functions and exercise specified powers of the single authority or joint authority;
- (b) the appointment by that board of a chief executive officer to be responsible for the administration and operation of the authority;
- (c) the appointment by the chief executive officer of persons to assist the board in performing its functions and exercising its powers;
- (d) the delegation of functions and powers of the board to the chief executive officer;

- (e) the delegation of functions and powers of the chief executive officer to a person appointed under paragraph (c) ;
- (f) the transfer of employees and the rights and entitlements of employees transferred –
 - (i) from a council to a single authority or a joint authority; or
 - (ii) from a single authority or joint authority to a council;
- (g) the transfer of assets and liabilities –
 - (i) from a single authority or joint authority to a council; or
 - (ii) from a council to a single authority or joint authority;
- (h) the fixing and imposition of fees and charges relating to any goods or services provided by the authority;
- (i) the making of by-laws in accordance with Part 11 .

(3A) If a board of management is provided for under subsection (3)(a) , the rules of a single authority or joint authority are to provide for consultation between the membership of the authority and the board of management in respect of the strategic direction to be taken by the authority.

- (4) Subject to this section, the rules are not to provide for functions and powers that –
 - (a) exceed the functions and powers of a council; or
 - (b) empower the making of any rate or charge referred to in Part 9 ; or
 - (c) empower the imposition of any fee or charge referred to in section 205 .
- (5) The rules may be amended –
 - (a) by the absolute majority of a single authority council; or
 - (b) by the majority of the participating councils; or
 - (c) if there are only 2 participating councils, by both the councils.
- (6) Any amendments to the rules are to be dealt with as if they were proposed rules.
- (7) Subsection (6) does not apply if the amendment –
 - (a) is of a technical or administrative nature; or
 - (b) does not significantly alter the purpose or objectives of the single authority or joint authority; or
 - (c) does not significantly alter the interaction between the authority and the public.

Division 5 -

PART 3A - Payments by Single and Joint Authorities

39A. Interpretation: Part 3A

In this Part, unless the contrary intention appears –

applicable authority means a single authority or joint authority declared as such in an order made under section 39B ;

comptroller means a person administering guarantee fees on behalf of a single authority council or participating councils.

39B. Application of Part

(1) This Part applies to –

- (a) an applicable authority; and
- (b) the single authority council or participating councils of an applicable authority.

(2) The Governor, by order published in the *Gazette*, may declare a single authority or joint authority to be an applicable authority for the purpose of this Part.

39C. Payments

(1) The Treasurer and a comptroller must pay to the relevant single authority council or participating councils the proceeds of all payments received under this Part at such times as are agreed with the single authority council or participating councils.

(2) In the case of an applicable authority, the amount to be paid to the single authority council or participating councils is the amount of all payments made to the Treasurer or comptroller by the authority after adjustments are made for any refunds or variations to which the authority is entitled.

(3) The Treasurer and a comptroller may deduct from any amount payable under this section, or invoice a single authority council or participating councils, an amount representing the fair and reasonable cost which he or she has incurred in the administration of this Part.

(4) The Treasurer and a comptroller must, before 31 August in each year, provide each single authority council and participating council with a summary showing the calculation and payment of income tax equivalents and guarantee fees for which the Treasurer or comptroller was responsible under this Part during the previous financial year.

39D. Application of certain provisions of the Government Business Enterprises Act 1995

(1) Parts 1 and 10 , except section 68 , Division 1 of Part 11 , except section 81 , and sections 114 and 118 of the Government Business Enterprises Act 1995 apply in relation to the calculation, determination and payment of income tax equivalents and guarantee fees by an applicable authority as if–

- (a) the authority were a Government Business Enterprise specified in Schedules 2 and 3 of that Act ; and
- (b) a reference to the Crown in section 70 (2) of that Act were read as a reference to a public body carrying out some or all of the functions that are ordinarily carried out by a council; and
- (c) a reference to the Treasurer in Division 1 of Part 11 of that Act were read as a reference to a comptroller within the meaning of this Part; and
- (d) a reference to the Consolidated Fund in Part 10 of that Act were read as a reference to an account within the Special Deposits and Trust Fund; and
- (e) a reference to the Consolidated Fund in Division 1 of Part 11 of that Act were read as a reference to the comptroller.

(2) For the purposes of the application of the Parts, Division and sections specified in subsection (1) , the terms specified in section 3 of the Government Business Enterprises Act 1995 apply except as provided in subsection

(1) or in regulations made under subsection (3) .

(3) Regulations may be made modifying the provisions of the Parts, Division and sections specified in subsection (1) .

39E. Appointment of comptroller

(1) A single authority council or the participating councils must, for the purposes of this Part, appoint a comptroller who is to be responsible for all matters in respect of the calculation, determination and payment of guarantee fees and any other relevant matters.

(2) A comptroller is to be appointed in accordance with rules made under section 39 .

PART 4 - Elections

Division 1 - Mayors and deputy mayors

40. Election electors

The mayor and deputy mayor of a council are to be elected by the electors of the municipal area.

41. Eligibility for nomination as mayor or deputy mayor

(1) A person is eligible to nominate as a candidate for the office of mayor or deputy mayor if the person is eligible to nominate as a candidate for the office of councillor under Part 15 .

(2)

(3) A person may not be a candidate for both the offices of mayor and deputy mayor concurrently.

(4) A person may not accept the office of mayor or deputy mayor unless the person is a councillor.

(5) The provisions of Division 4 of Part 15 relating to notices of nominations apply to a person who is eligible to nominate as a candidate for the office of mayor or deputy mayor.

42.

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43. Election by electors

(1) The election of a mayor and deputy mayor of a council within a municipal area that is divided into electoral districts is to be conducted without taking into account those electoral districts.

(2) The election of mayor and the election of deputy mayor are each separate elections from the election of councillors but must be held concurrently with the election of councillors.

(3) The elections of mayor and deputy mayor are to be held in accordance with Part 15 .

43A. Election by councillors in certain cases

If there is no nomination for the office of mayor or deputy mayor of a council, the councillors of the council are to elect one of their number to the office in the prescribed manner.

44. Term of office

(1) The mayor and deputy mayor are to be elected for a period of 4 years and hold office from the date of issue of the certificate of election in respect of an ordinary election for that office until the date of issue of the next certificate of election in respect of an ordinary election for that office.

(2) If the office of mayor becomes vacant for any reason, the deputy mayor is to act in that office –

(a) until the certificate of election for the by-election for that vacancy is issued; or

(b) if the vacancy is within 6 months before the notice of the election is to be given, until the certificate of election for that election is issued.

(3)

(4) If the office of deputy mayor becomes vacant for any reason, the councillors are to elect one of their number to the office of deputy mayor in the prescribed manner for the balance of the term.

(5) If the deputy mayor is acting as mayor or is temporarily absent for any period, the councillors may appoint one of their number to act as deputy mayor during that period.

Division 2 - Councillors

45. Election of councillors

- (1) A councillor is to be elected –
 - (a) if a municipal area is not divided into electoral districts, by the electors in that municipal area; or
 - (b) if a municipal area is divided into electoral districts, by the electors of the electoral district in respect of which the councillor is to be elected.
- (2) The election of councillors is to be held in accordance with Part 15 .
- (3) The number of persons to be elected as councillors by each electoral district is specified in column 5 of Schedule 3 next to the name of that electoral district.
- (4) The Governor, on the recommendation of the Minister, may amend or substitute column 5 of Schedule 3 or substitute that Schedule in an order made under section 214E relating to councils to give effect to that order.

46. Term of office of councillors

- (1) A councillor is to be elected for a period of 4 years and holds office from the date of issue of the certificate of election in respect of an ordinary election for that office until the date of issue of the next certificate of election in respect of an ordinary election for that office.
- (2)
- (2A)
- (2B)
- (2C) The Governor, on the recommendation of the Minister, may make an order determining or altering the term of office of a councillor of a council elected–
 - (a) at an election following the dismissal of all the councillors of that council; or
 - (b) at a deferred poll.
- (3)

46A. Term of office relating to elections in 2011

The term of office of a councillor elected in the election held in October 2011 in respect of a municipal area is the period concluding on the day on which the certificate of election is issued in respect of the ordinary election due to be held in October 2013 in respect of the municipal area.

47. Resignations

- (1) A councillor may resign from office at any time.
- (2) A resignation is to be made in writing and forwarded to the general manager.
- (3) Except as provided in subsection (6) , on the date of receipt by the general manager of the resignation of a councillor –
 - (a) the resignation takes effect; and
 - (b) the office of councillor becomes vacant.
- (3A) On receipt of a resignation, the general manager is to advise the council and the Electoral Commissioner of the resignation.
- (4) A councillor who has resigned as mayor or deputy mayor may continue in office as councillor.
- (5) A councillor who holds the office of a mayor or deputy mayor and resigns as councillor ceases to hold such office.
- (6)

PART 5 - Interests

47A.

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48. Declaration of interest by councillor

(1) A councillor must not participate at any meeting of a council, council committee, special committee, controlling authority, single authority or joint authority in any discussion, nor vote on any matter, in respect of which the councillor—

- (a) has an interest; or
- (b) is aware or ought to be aware that a close associate has an interest.

Penalty: Fine not exceeding 20 penalty units.

(2) A councillor must declare any interest that the councillor has in a matter before any discussion on that matter commences.

Penalty: Fine not exceeding 50 penalty units.

(3) On declaring that he or she has an interest, the councillor is to leave the room in which the meeting is being held.

Penalty: Fine not exceeding 20 penalty units.

(4) The councillor, by notice in writing, is to advise the general manager of the details of any interest that the councillor has declared under this section within 7 days of so declaring.

Penalty: Fine not exceeding 20 penalty units.

(5) The general manager is to —

- (a) ensure that the declaration of interest is recorded in the minutes of the meeting at which it is made; and
- (b) record the details of any interest declared in the register of interests kept under section 54 .

(6) In addition to any penalty imposed under this section, a court may make an order —

- (a) barring the councillor from nominating as a candidate at any election for a period not exceeding 7 years; and
- (b) dismissing the councillor from office.

48A. Declaration of interest by member

(1) At any meeting of a special committee or controlling authority, or the board of a single authority or joint authority, a member must not participate in any discussion, or vote on any matter, in respect of which the member —

- (a) has an interest; or
- (b) is aware or ought to be aware that a close associate has an interest.

Penalty: Fine not exceeding 20 penalty units.

(2) A member must declare any interest that he or she has in a matter before any discussion on that matter commences.

Penalty: Fine not exceeding 50 penalty units.

(3) On declaring an interest that he or she has, the member is to leave the room in which the meeting is being held.

Penalty: Fine not exceeding 20 penalty units.

(4) A member of a special committee or controlling authority, by notice in writing, is to advise the general manager of the details of any interest that he or she has declared under this section within 7 days of that declaration.

Penalty: Fine not exceeding 20 penalty units.

(5) A member of a board of a single authority or joint authority, by notice in writing, is to advise the chief executive officer of that authority of the details of any interest declared by the member under this section within 7 days of that declaration.

Penalty: Fine not exceeding 20 penalty units.

(6) The general manager or chief executive officer is to –

(a) ensure that the declaration of interest is recorded in the minutes of the meeting at which it is made; and

(b) record the details of any declared interest in the register of interests kept under section 53B or 54A .

49. Having an interest

(1) A councillor or member has an interest in a matter if the councillor or member or a close associate would, if the matter were decided in a particular manner, receive, have an expectation of receiving or be likely to receive a pecuniary benefit or pecuniary detriment.

(2)

50.

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51. Close associate

For the purposes of this Part, a person is a close associate of a councillor or member if that person is–

(a) a body corporate of which the councillor or member is a director or a member of the governing body; or

(b) a proprietary company in which the councillor or member is a shareholder; or

(c) a public company in which the councillor or member is directly or indirectly a substantial shareholder; or

(d) a beneficiary under a trust or an object of a discretionary trust of which the councillor or member is a trustee; or

(e) a business partner of the councillor or member; or

(f) the employer or an employee of the councillor or member; or

(g) a person from whom the councillor or member has received, or might reasonably be expected to receive, a fee, commission or other reward for providing professional or other services in relation to a matter being dealt with or to be dealt with by the council, council committee, special committee, controlling authority, single authority or joint authority; or

(h) the spouse or partner of the councillor, member, councillor's son or daughter or member's son or daughter; or

(i) the son, daughter, brother, sister, mother or father of the councillor or member or of their spouse or partner.

52. Non-application of Part

(1) This Part does not apply to a councillor, member or close associate who has any pecuniary interest in any matter if –

- (a) the benefit or detriment is one received in common with all or a substantial proportion of the electors of the municipal area; or
- (b) the matter relates to an insurance policy or an indemnity policy being considered or taken out by the council, single authority or joint authority to insure or indemnify councillors or members or their spouses or partners unless the matter relates to, or is a claim made by, the councillor or member; or
- (c) in relation to the consideration of an application or request for approval, authorisation, licence, permit, exemption or other right under this or any other Act, the extent of the interest of the councillor, member or close associate is no greater than that of any other member of the public; or
- (ca) the matter relates to the making of a rate or charge under Part 9 ; or
- (d) the matter relates to any allowances or expenses payable to councillors or members; or
- (e) the interest is a beneficial interest in shares of a company or other body where the total nominal value of those shares does not exceed whichever is the lesser of the following amounts:
 - (i) an amount of \$10 000;
 - (ii) an amount which is 1% of the total nominal value of the issued share capital of the company or body.

(1A) For the purpose of subsection (1) –

substantial proportion of the electors means at least 5% or 1 000 electors, whichever is the lesser.

(2) This Part does not apply to a councillor, member or close associate who has any pecuniary interest in any matter only because –

- (a) the matter involves –
 - (i) expenditure from money belonging to, or held by, a council, council committee, special committee, controlling authority, single authority or joint authority and the councillor or member contributes to the money as a ratepayer; or
 - (ii) the fixing of fees by a council, single authority or joint authority; or
 - (iii) the terms and conditions on which the right to participate in the supply of goods and services is offered to members of the public; or
- (b) the councillor or member or close associate is a person to whom goods or services are supplied in the same manner and subject to the same terms and conditions as apply to members of the public; or
- (c) the councillor or member or close associate provides services of a professional nature to another person who is the subject of, or is involved in, the matter; or
- (d) the councillor or member or close associate is a member of a body, club, union or other non-profit organisation if –
 - (i) a personal benefit or detriment to the councillor, member or close associate, or the spouse or partner of the councillor, member or close associate, is not involved; and
 - (ii) the councillor, member or close associate is not an office-bearer of that body, club, union or organisation; or
- (da) the councillor, member or close associate is appointed or nominated as a member of a body by the council; or
- (e) the matter relates to planning and development issues that apply throughout the municipal area and do not result in any particular benefit or detriment to the councillor or member or close associate that is no greater than any member of the public; or

- (f) the councillor or member or close associate is an employee in the service of the Crown or of a body established under any Act for a public purpose; or
- (g) the councillor or member or close associate is a candidate for election as councillor, mayor or deputy mayor; or
- (h) the councillor, member or close associate is a member of a body established by a council.

(3) A council, at a meeting open to the public, may decide to exempt a councillor or member from this Part for a period not exceeding 12 months if the councillor or member has a potential pecuniary interest in a matter only because of being appointed or nominated as a councillor or member due to expertise arising from direct involvement in an activity that gives rise to that potential pecuniary interest.

53. Notification of interest

- (1) Any person who considers that a councillor, member or member of an audit panel has an interest in a matter to be, or being, dealt with by a council, council committee, special committee, controlling authority or audit panel may notify the general manager in writing of that interest.
- (2) On receipt of a notification, the general manager is to advise the following persons of the notification:
 - (a) the councillor, member or member of an audit panel who is the subject of the notification;
 - (b) all other councillors, members or members of the audit panel.

53A. Notification of interest of member

- (1) Any person who considers that a member of a board of a single authority or joint authority has an interest in a matter to be, or being, dealt with by a single authority or joint authority may notify the chief executive officer of that authority in writing of that interest.
- (2) On receipt of a notification, the chief executive officer is to advise –
 - (a) the chairperson; and
 - (b) the member who is the subject of the notification.

53B. Register of interests of board members

- (1) The chief executive officer of a single authority or joint authority is to keep a register of interests of members of the board of that authority advised under section 48A(5) .
- (2) A register kept under this section is exempt from the provisions of the Right to Information Act 2009 .

54. Register of interests of councillors

- (1) The general manager is to keep a register of interests, of councillors, of which the general manager has been advised under section 48(4) .
- (2) A person, by notice in writing to the general manager, may apply to inspect the register of interests.
- (3) On receipt of an application, the general manager is to allow the applicant to inspect the register of interests.
- (4)
- (5)

54A. Register of interests of members

- (1) The general manager is to keep a register of interests of members of a special committee or controlling authority.
- (2) A councillor of a council that has established a special committee or controlling authority may inspect a register of interests kept under this section.
- (3) A register kept under this section is exempt from the provisions of the Right to Information Act 2009 .

55. Interests of employees and general manager

(1) An employee of a council must notify the general manager, or in the case of the general manager the mayor, in writing of having an interest as referred to in section 49 in any matter in respect of which he or she—

- (a) provides advice to the council or council committee; or
- (b) makes a decision or determination; or
- (c) makes a recommendation to the council or council committee.

Penalty: Fine not exceeding 50 penalty units.

(1A) Section 51 applies as if a reference to a councillor were a reference to an employee or a general manager.

(2) The general manager is to —

- (a) advise the council of the existence of any interest notified under subsection (1) ; and
- (b) keep a register of any such interest.

(3) Any register kept under subsection (2) (b) is exempt from the provisions of the Right to Information Act 2009 .

55A. Interests of employees of authorities

(1) An employee of a single authority or joint authority must notify the chief executive officer in writing, or the chief executive officer of a single authority or joint authority must notify the board of management of that authority in writing, of having an interest as referred to in section 49 in any matter in respect of which he or she —

- (a) provides advice to that authority; or
- (b) makes a decision or determination; or
- (c) makes a recommendation to that authority.

Penalty: Fine not exceeding 50 penalty units.

(2) Section 51 applies as if a reference to a councillor were a reference to an employee or a chief executive officer of a single authority or joint authority.

(3) The chief executive officer of a single authority or joint authority is to —

- (a) advise the board of management of that authority of the existence of any interest notified under subsection (1) ; and
- (b) keep a register of any such interest.

(4) Any register kept under subsection (3)(b) is exempt from the provisions of the Right to Information Act 2009 .

55B. When member of audit panel has an interest

(1) A member of an audit panel has an interest in the making of a recommendation or in a review by the audit panel if —

- (a) were the audit panel to make a particular possible recommendation and that recommendation were to be adopted by the council, the member or a close associate of the member would receive, have an expectation of receiving or be likely to receive or have an expectation of receiving a pecuniary benefit or pecuniary detriment; or
- (b) were the audit panel to conclude the review in a particular possible manner, the member or a close associate of the member would receive, have an expectation of receiving or be likely to receive or have an expectation of receiving a pecuniary benefit or pecuniary detriment.

(2) For the purposes of subsection (1) , the member of the audit panel has an interest in the making of a recommendation or a review from when the first of the following occurs:

- (a) the member becomes aware that he or she has an interest;
- (b) the member should reasonably have become aware that he or she has an interest.

(3) Sections 51 and 52 apply as if a reference to a member were a reference to a member of the audit panel.

55C. Declaration of interest by member of audit panel

(1) At any meeting of an audit panel, a member who has an interest in the making of a recommendation or a review must not, once he or she becomes aware of that interest - participate in any discussion, or vote, in relation to the recommendation or review; or be present during any such discussion or vote.

Penalty: Fine not exceeding 20 penalty units.

(2) A member of an audit panel must declare any interest that he or she has in the making of a recommendation or a review before any discussion, or further discussion, relating to the recommendation or review takes place.

Penalty: Fine not exceeding 50 penalty units.

(3) The chairperson of the audit panel is to ensure that a declaration of an interest in the making of a recommendation or a review is recorded in –

- (a) the minutes of the meeting of the audit panel; and
- (b) any relevant written report that the audit panel provides to the relevant council.

Penalty: Fine not exceeding 20 penalty units.

(4) A member of an audit panel is to notify the general manager, in writing, of the details of any interest that he or she has declared under this section within 7 days of that declaration.

Penalty: Fine not exceeding 20 penalty units.

55D. Register of interests of members of audit panel

(1) The general manager is to keep a register of the interests of members of audit panels.

(2) The general manager is to enter into the register the details of an interest of a member of audit panel when notified as specified in section 55C(4) .

(3) A councillor may inspect that part of the register that relates to the members of the audit panel established by his or her council.

(4) The register is exempt from the provisions of the Right to Information Act 2009 .

55E. Validity of audit panel proceedings, &c.

Any proceeding, review or recommendation of the audit panel is not invalid by reason only that, at the time the proceeding, review or recommendation was held, conducted or made, a member of the audit panel –

- (a) had not declared an interest as required by section 55C ; or
- (b) had voted on a matter in respect of which the member had not declared such an interest.

56. Validity of decisions

Any proceedings or decisions of a council, council committee, special committee, controlling authority, single authority or joint authority are not invalid by reason only that at the time the proceedings were held or the decisions were made, a councillor or member–

- (a) had not declared an interest as required by section 48 or 48A ; or
- (b) had voted on a matter in respect of which the councillor or member had not declared such an interest.

PART 5A - Gifts and Donations

56A. Councillor to notify of gifts and donations

(1) A councillor who receives –

(a) a gift or donation prescribed by the regulations for the purposes of this section; or

(b) a gift or donation of a class prescribed by the regulations, for the purposes of this section –

must notify the general manager of that gift or donation.

Penalty: Fine not exceeding 10 penalty units.

(2) A notice is to –

(a) be in writing; and

(b) contain the details prescribed by the regulations; and

(c) be provided to the general manager within the period prescribed by the regulations.

56B. Gifts and donations register

(1) The general manager is to keep a register of the gifts and donations referred to in section 56A(1) that have been received by councillors.

(2) The register is to include the following information:

(a) the name of the councillor;

(b) a description of the gift or donation;

(c) any other information required by the regulations to be included.

PART 6 - Petitions, polls and public meetings

Division 1 - Petitions

57. Petitions

- (1) A person may lodge a petition with a council by presenting it to a councillor or the general manager.
- (2) A person lodging a petition is to ensure that the petition contains –
 - (a) a clear and concise statement identifying the subject matter and the action requested; and
 - (b) in the case of a paper petition, a heading on each page indicating the subject matter; and
 - (c) in the case of a paper petition, a brief statement on each page of the subject matter and the action requested; and
 - (d) a statement specifying the number of signatories; and
 - (e) at the end of the petition –
 - (i) in the case of a paper petition, the full name, address and signature of the person lodging the petition; and
 - (ii) in the case of an electronic petition, the full name and address of the person lodging the petition and a statement by that person certifying that the statement of the subject matter and the action requested, as set out at the beginning of the petition, has not been changed.

- (3) In this section –

electronic petition means a petition where the petition is created and circulated electronically and the signatories have added their details by electronic means;

paper petition means a petition where the petition is created on paper which is then circulated and to which the signatories have added their details directly onto the paper;

petition means a paper petition or electronic petition;

signatory means –

- (a) in the case of a paper petition, a person who has added his or her details to the paper petition and signed the petition; and
- (b) in the case of an electronic petition, a person who has added his or her details to the electronic petition.

58. Tabling petition

- (1) A councillor who has been presented with a petition is to –
 - (a)
 - (b) forward it to the general manager within 7 days after receiving it.
- (2) A general manager who has been presented with a petition or receives a petition under subsection (1)(b) is to table the petition at the next ordinary meeting of the council.
- (3) A petition is not to be tabled if –
 - (a) it does not comply with section 57 ; or
 - (b) it is defamatory; or
 - (c) any action it proposes is unlawful.
- (4) The general manager is to advise the lodger of a petition that is not tabled the reason for not tabling it within 21 days after lodgment.

59. Petitions seeking public meetings

- (1) A petition under section 57 may request that a council hold a public meeting regarding the subject matter of the petition.
- (2) A council must hold a public meeting if the petition complies with section 57 and it is signed by whichever is the lesser of the following:
 - (a) 5% of the electors in the municipal area;
 - (b) 1 000 of those electors.
- (3) A petition that requests a public meeting is not to be made in respect of any matter relating to rates and charges in Part 9 if those rates or charges have been made for the current financial year.

60. Action on petition

- (1) The general manager, by notice in writing to the person who lodged the petition, is to –
 - (a) advise whether the petition complies with section 59 , if it seeks a public meeting; and
 - (b) give reasonable notice of when the council is to consider the petition.
- (2) Within 42 days after the tabling of the petition –
 - (a) the general manager is to advise the council at a council meeting whether the petition complies with section 59 , if applicable; and
 - (b) the council, at that meeting, is to determine any action to be taken in respect of the petition.
- (3) If the petition complies with section 59 , or the council otherwise resolves to hold a public meeting regarding the subject matter of the petition, the council, within 30 days after the meeting referred to in subsection (2) , is to hold a public meeting to discuss the subject matter of the petition.
- (4) The council is to record in the minutes of the meeting referred to in subsection (2) –
 - (a) the subject matter of the petition; and
 - (b) the number of signatories to the petition.

60A. Public meetings and submissions

- (1) Before holding a public meeting under section 59 or section 60(3) , a council, in a notice publicly displayed, must –
 - (a) state the date on which, and the time and place at which, the public meeting is to be held; and
 - (b) state the details of the subject matter; and
 - (c) invite written submissions in relation to the subject matter to be lodged with the general manager.
- (2) A copy of the notice under subsection (1) is to be –
 - (a) published on at least 2 occasions in a daily newspaper circulating in the municipal area; and
 - (b) sent to the person who lodged the petition.
- (3) A submission must be lodged within 21 days after the first publication of the notice.
- (4) Any submission received is to be summarised by the general manager in a document, copies of which are to be made available to those attending the public meeting.
- (5) The minutes of the next ordinary meeting of the council following the public meeting are to record –
 - (a) a summary of any submission received under this section; and
 - (b) any decision made at a public meeting held under this section.

Division 2 - Elector polls

60B. Council-initiated elector polls

- (1) A council, on its own motion, may hold an elector poll on any issue the council determines.
- (2) An elector poll under subsection (1) may be conducted in any manner the council determines.

60C. Petition requesting elector poll

- (1) A council must hold an elector poll if –
 - (a) a petition requesting the elector poll is received within 30 days after a public meeting is held under section 59 in relation to the same subject matter as that contained in the petition requesting that public meeting; and
 - (b) the petition is signed by at least 5% of the electors in the municipal area or 1 000 of those electors, whichever is the lesser; and
 - (c) the petition complies with section 57(2) .
- (2) If –
 - (a) the person who lodged the petition agrees to an elector poll being held in conjunction with the next ordinary election; or
 - (b) a petition requesting an elector poll is received within 60 days before the notice of election for the next ordinary election –

the elector poll may be held in conjunction with that next ordinary election.

60D. Elector polls

- (1) An elector poll under section 60C is to be –
 - (a) held within 60 days after the receipt of the petition, except as provided under section 60C(2) ; and
 - (b) held for the whole municipal area; and
 - (c) conducted as determined by the Electoral Commissioner or any other person authorised by the council.
- (2) An elector poll held in conjunction with an election is to be conducted as determined by the Electoral Commissioner.
- (3) A matter which is the subject of an elector poll is to be decided by a simple majority of the formal votes cast.
- (4) The general manager is to ensure that the result of an elector poll is published in a newspaper circulating in the municipal area.
- (5) A further elector poll on the same issue is not to be held until after the next ordinary election.

60E. Result of elector poll

- (1) A council is to discuss the result of an elector poll at its next ordinary meeting.
- (2) The result of an elector poll is not binding on a council.

Division 3 - General public meetings

60F. Public meetings

A council, on its own motion, may hold a public meeting to discuss any issue the council determines.

PART 7 - Administration

Division 1 - General manager and employees

61. Appointment of general manager

(1) A council is to appoint a person as general manager of the council for a term not exceeding 5 years on terms and conditions it considers appropriate.

(1A) In appointing a person as general manager of the council, a council is to do so in accordance with any relevant order made under section 61A .

(2) An appointment under subsection (1) is not to be extended or renewed so as to exceed 5 years in total unless the council has reviewed its terms and conditions.

(3) When a vacancy for the position of general manager occurs or is about to occur, a council is to notify the vacancy, and may invite applications for the position, in a daily newspaper circulating in the municipal area.

(4) Not later than 6 months before the expiry of the general manager's appointment, a council may resolve to reappoint the general manager without seeking applications for the position.

(5) A reappointment under subsection (4) is to be treated as if it were an appointment under subsection (1) .

(6)

61A. Order relating to appointment and performance of general managers

(1) The Minister, by order, may do any one or more of the following:

(a) specify the principles governing the selection of a general manager;

(b) specify the matters, and classes of matters, that are to be taken into account when a council is selecting, or reappointing, a general manager;

(c) specify the procedures to be followed by a council in relation to appointing, or reappointing, a general manager;

(d) provide, or provide for the development of, the processes and procedures to be followed by a council in monitoring the performance of a general manager.

(2) The Minister may amend, revoke, or revoke and substitute an order.

(3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.

(4) Section 47(3) , (3A) , (4) , (5) , (6) and (7) of the Acts Interpretation Act 1931 applies to an order under this section as if the order were regulations within the meaning of that Act.

(5) An order under this section is subordinate legislation for the purposes of the Subordinate Legislation Act 1992 .

61B. Acting general managers

(1) For the purposes of this section, a general manager is absent if –

(a) he or she is absent from duty for any reason; or

(b) he or she is otherwise unavailable or unable to perform the functions of the office of general manager; or

(c) the position of general manager is vacant.

(2) The mayor may appoint a person to act in the office of general manager if –

(a) the general manager is absent and no person holds an appointment under subsection (4) ; or

(b) the general manager is absent and the person appointed under subsection (4) is absent from duty or otherwise unavailable or unable to act in the office of general manager.

(3) An appointment under subsection (2) ends when the first of the following occurs:

- (a) the general manager returns to duty;
- (b) the term of the appointment expires;
- (c) the mayor or the council revokes the appointment;
- (d) a person is appointed as general manager under section 61 .

(4) The council may appoint a person to act in the office of general manager during every absence of the general manager.

(5) An appointment under subsection (4) is for the term, not exceeding 5 years, specified in the appointment and ends when the first of the following occurs:

- (a) the term of the appointment expires;
- (b) the council revokes the appointment;
- (c) if the appointment is to the holder of an office, the person ceases to hold that office.

(6) While a person appointed to act in the office of general manager is acting as general manager, that person is taken to be the general manager.

62. Functions and powers of general manager

(1) The general manager has the following functions:

- (a) to implement the policies, plans and programs of the council;
- (b) to implement the decisions of the council;
- (c) to be responsible for the day-to-day operations and affairs of the council;
- (d) to provide advice and reports to the council on the exercise and performance of its powers and functions and any other matter requested by the council;
- (e) to assist the council in the preparation of the strategic plan, annual plan, annual report and assessment of the council's performance against the plans;
- (f) to coordinate proposals for the development of objectives, policies and programs for the consideration of the council;
- (g) to liaise with the mayor on the affairs of the council and the performance of its functions;
- (h) to manage the resources and assets of the council;
- (i) to perform any other function the council decides.

(2) The general manager may do anything necessary or convenient to perform his or her functions under this or any other Act.

62A. Order relating to general manager's functions generally

(1) The Minister, by order, may clarify the functions of general managers by specifying matters, or classes of matters, that are operational or administrative in nature and so are to be performed by general managers.

(2) The Minister may amend, revoke, or revoke and substitute an order.

(3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.

(4) An order under this section may be combined with an order under any one or more of the following sections:

- (a) section 27A ;

(b) section 28AA ;

(c) section 62B .

(5) Section 47(3) , (3A) , (4) , (5) , (6) and (7) of the Acts Interpretation Act 1931 applies to an order under this section as if the order were regulations within the meaning of that Act.

(6) An order under this section is subordinate legislation for the purposes of the Subordinate Legislation Act 1992 .

62B. Order relating to general manager's function to liaise with mayor

(1) The Minister, by order, may specify the manner in which general managers are to liaise with their mayors.

(2) The Minister may amend, revoke, or revoke and substitute an order.

(3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.

(4) An order under this section may be combined with an order under any one or more of the following sections:

(a) section 27A ;

(b) section 28AA ;

(c) section 62A .

(5) Section 47(3) , (3A) , (4) , (5) , (6) and (7) of the Acts Interpretation Act 1931 applies to an order under this section as if the order were regulations within the meaning of that Act.

(6) An order under this section is subordinate legislation for the purposes of the Subordinate Legislation Act 1992 .

63. Employees

(1) The general manager of a council may –

(a) appoint persons as employees of the council; and

(b) allocate duties to employees; and

(c) control and direct employees; and

(d) suspend or dismiss employees.

(2) The general manager is to develop human resource practices and procedures in accordance with policies of the council to ensure employees of the council receive fair and equitable treatment without discrimination.

64. Delegation by general manager

The general manager, in writing, may delegate to an employee of the council –

(a) any functions or powers under this or any other Act, other than this power of delegation; and

(b) any functions or powers delegated by the council which the council authorized the general manager to delegate.

65. Qualified persons

(1) A general manager must ensure that any advice, information or recommendation given to the council or a council committee is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.

(2) A council or council committee is not to decide on any matter which requires the advice of a qualified person without considering such advice unless –

(a) the general manager certifies, in writing –

(i) that such advice was obtained; and

(ii) that the general manager took the advice into account in providing general advice to the council or council committee; and

(b) a copy of that advice or, if the advice was given orally, a written transcript or summary of that advice is provided to the council or council committee with the general manager's certificate.

(3)

(4)

Division 2 - Plans and report

66. Strategic plan

(1) A council is to prepare a strategic plan for the municipal area.

(2) A strategic plan is to be in respect of at least a 10 year period.

(3) In preparing a proposed strategic plan, a council is to consult with the community in its municipal area and any authorities and bodies it considers appropriate.

(4) The general manager is to make a copy of a proposed strategic plan available for public inspection at the public office during ordinary office hours.

67.

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68. Proposed strategic plan

After preparing a proposed strategic plan, a council is to –

(a) invite submissions in respect of the plan; and

(b) consider the submissions before adopting the plan.

69. Public inspection of strategic plan

As soon as a council adopts a strategic plan, the general manager is to–

(a) make a copy of the strategic plan available for public inspection at the public office during ordinary office hours; and

(b) provide the Director with a copy of the strategic plan.

70. Long-term financial management plans

(1) A council is to prepare a long-term financial management plan for the municipal area.

(2) A long-term financial management plan is to be in respect of at least a 10 year period.

(3) A long-term financial management plan for a municipal area is to –

(a) be consistent with the strategic plan for the municipal area; and

(b) refer to the long-term strategic asset management plan for the municipal area; and

(c) contain at least the matters that are specified in an order made under section 70F as required to be included in a long-term financial management plan.

70A. Financial management strategies

(1) A council is to prepare a financial management strategy for the municipal area.

(2) A financial management strategy for a municipal area is to –

(a) be consistent with the strategic plan for the municipal area; and

(b) contain at least the matters that are specified in an order made under section 70F as required to be included in a financial management strategy.

70B. Long-term strategic asset management plans

- (1) A council is to prepare a long-term strategic asset management plan for the municipal area.
- (2) A long-term strategic asset management plan is to relate to all assets that are within a class of assets specified in an order under section 70F(3) to be major assets.
- (3) A long-term strategic asset management plan is to be in respect of at least a 10 year period.
- (4) A long-term strategic asset management plan for a municipal area is to –
 - (a) be consistent with the strategic plan for the municipal area; and
 - (b) refer to the long-term financial management plan for the municipal area; and
 - (c) contain at least the matters that are specified in an order made under section 70F as required to be included in a long-term strategic asset management plan.

70C. Asset management policies

- (1) A council is to prepare an asset management policy for the municipal area.
- (2) An asset management policy for a municipal area is to –
 - (a) be consistent with the strategic plan for the municipal area; and
 - (b) guide the development of the long-term strategic asset management plan for the municipal area; and
 - (c) guide the development of the long-term financial management plan for the municipal area; and
 - (d) contain at least the matters that are specified in an order made under section 70F as required to be included in an asset management policy.

70D. Asset management strategies

- (1) A council is to prepare an asset management strategy for the municipal area.
- (2) An asset management strategy for a municipal area is to –
 - (a) be consistent with the strategic plan for the municipal area; and
 - (b) contain at least the matters that are specified in an order made under section 70F as required to be included in an asset management strategy.

70E. Review of plans, strategies and policies

- (1) A council, at least every 4 years, is to review its –
 - (a) strategic plan; and
 - (b) long-term financial management plan; and
 - (c) long-term strategic asset management plan; and
 - (d) financial management strategy; and
 - (e) asset management strategy; and
 - (f) asset management policy.
- (2) As soon as practicable after a council adopts a plan, strategy or policy referred to in subsection (1) , the general manager is to notify the Director accordingly.

70F. Orders determining minimum contents of plans, &c., and classes of assets

- (1) The Minister, by order, may specify the matters that are required to be included in –
 - (a) a long-term financial management plan; or

- (b) a long-term strategic asset management plan; or
- (c) a financial management strategy; or
- (d) an asset management strategy; or
- (e) an asset management policy.

(2) A matter may be included in a plan, policy or strategy referred to in subsection (1) , even though the matter is not specified in an order under subsection (1) as required to be included in such a plan, policy or strategy.

(3) The Minister, by order, may specify the classes of assets that are to be taken to be major assets for the purposes of section 70B .

(4) The Minister is to consult with councils as to the matters to be included in an order under this section.

71. Annual plan

(1) A council is to prepare an annual plan for the municipal area for each financial year.

(2) An annual plan is to –

- (a) be consistent with the strategic plan; and
- (b) include a statement of the manner in which the council is to meet the goals and objectives of the strategic plan; and
- (c) include a summary of the estimates adopted under section 82 ; and
- (d) include a summary of the major strategies to be used in relation to the council's public health goals and objectives.

(3) As soon as practicable after a council adopts an annual plan, the general manager is to –

- (a) make a copy of the annual plan available for public inspection at the public office during ordinary business hours; and
- (b) provide the Director and the Director of Public Health with a copy of the annual plan.

72. Annual report

(1) A council must prepare an annual report containing all of the following:

- (a) a summary of the annual plan for the preceding financial year;
- (ab) a statement of its goals and objectives in relation to public health for the preceding financial year;
- (b) a statement of the council's activities and its performance in respect of goals and objectives set for the preceding financial year;
 - (ba) a statement of the number of code of conduct complaints that were upheld either wholly or in part during the preceding financial year;
 - (bb) the total costs met by the council during the preceding financial year in respect of all code of conduct complaints dealt with under Division 3A of Part 3 during the preceding financial year;
- (c) the financial statements for the preceding financial year;
 - (caa) a statement of the operating, capital and competitive neutrality costs in respect of each significant business activity undertaken by the council during the preceding financial year together with a statement of the revenue associated with that activity;
 - (ca) a statement of the activities and performance of the council in relation to any activity undertaken pursuant to section 21 as compared with its objectives for the preceding financial year;
 - (cb) a statement of the total allowances and expenses paid to the mayor, deputy mayor and councillors;
 - (cc) a statement detailing the attendance of each councillor at meetings of the council or any council committee during the preceding financial year;

(cd) a statement in accordance with subsection (4) relating to the total annual remuneration paid to employees of the council who are key management personnel, within the meaning of the Compiled Accounting Standard AASB 124, as amended or substituted from time to time, issued by the Australian Accounting Standards Board under the Australian Securities and Investments Commission Act 2001 of the Commonwealth;

(d) a copy of the audit opinion for the preceding financial year;

(da) a statement specifying details of any land donated by the council under section 177 , including the name of the recipient, the reasons for the donation and the value of the land;

(e) any other prescribed matter.

(1A) A statement under subsection (1)(ab) is to –

(a) state the extent to which the council has carried out its functions under the Public Health Act 1997 and the Food Act 2003 ; and

(b) state the resources allocated to public health; and

(c) state the extent to which its goals, objectives, policies and programs in relation to public health met the needs of persons within its municipal area; and

(d) include details of the completion of any strategies.

(2) The general manager is to –

(a) submit one copy of the report to the Director and one copy of the report to the Director of Public Health; and

(b) make available copies of the report for public inspection; and

(c) make available copies of the report free of charge or on payment of a prescribed fee; and

(d) advertise in a daily newspaper circulating in the municipal area the availability of the report, together with an invitation to electors to lodge submissions on the report with the council for discussion at its annual general meeting.

(3)

(4) A statement under subsection (1)(cd) is to list the number of employees in groups according to the total annual remuneration as specified in subsection (5) where each group has a maximum of \$20 000 between the highest and lowest total annual remuneration.

(5) The total annual remuneration of an employee means the total of the following for the financial year:

(a) the salary payable to the employee;

(b) the amount of employer contribution to the employee's superannuation;

(c) the value of the use of any motor vehicle provided to the employee;

(d) the value of any other allowances or benefits paid or payable to, or provided for the benefit of, the employee.

72A. GST dispute statement

A council is to provide a statement to the Treasurer containing details of any dispute that the council may have had with the Australian Taxation Office during the financial year relating to compliance with the GST law in accordance with the National Taxation Reform (Commonwealth-State Relations) Act 1999 .

Division 3 - Annual General Meeting

72B. Annual General Meeting

(1) A council must hold an Annual General Meeting on a date that –

- (a) is not later than 15 December in each year; and
 - (b) is not before 14 days after the date of the first publication of a notice under subsection (2) .
- (2) A council must publish a notice in a daily newspaper circulating in the municipal area or other prescribed newspaper specifying the date, time and place of the Annual General Meeting.
- (3) If a quorum of the council is not present at an Annual General Meeting –
- (a) the Annual General Meeting is to be reconvened and held within 14 days; and
 - (b) a notice is to be published in a daily newspaper circulating in the municipal area specifying the date, time and place of the Annual General Meeting.
- (4) Only electors in the municipal area are entitled to vote at an Annual General Meeting.
- (5) A motion at an Annual General Meeting is passed by a majority of votes taken by a show of hands or by any other means of ascertaining the vote the council determines.
- (6) A motion passed at an Annual General Meeting is to be considered at the next meeting of the council.
- (7) The general manager is to keep minutes of the Annual General Meeting.

PART 8 - Financial Management

Division 1 - Funds, expenditure and investments

73. Sources of funds

A council may raise funds in any one or more of the following ways:

- (a) by imposing rates, fees and charges;
- (b) by receiving interest and dividends on investments;
- (c) by selling property and assets;
- (d) by leasing or hiring out property;
- (e) by obtaining grants and other allocations of money;
- (f) by carrying out commercial activities;
- (g) by receiving gifts and bequests;
- (h) by recovering fees, charges, penalties or other money payable to the council;
- (i) by any other means approved by the Treasurer.

74. Expenditure

A council may expend its funds for the purpose of exercising its powers or carrying out its functions under this or any other Act within the estimates adopted under section 82 .

75. Investments

A council may invest any money –

- (a) in any manner in which a trustee is authorised by law to invest trust funds; and
- (b) in any investment the Treasurer approves.

76. Writing off bad debts

(1) A council may write off any debts owed to the council –

- (a) if there are no reasonable prospects of recovering the debt; or
- (b) if the costs of recovery are likely to equal or exceed the amount to be recovered.

(2) A council must not write off a debt unless the general manager has certified –

- (a) that reasonable attempts have been made to recover the debt; or
- (b) that the costs of recovery are likely to equal or exceed the amount to be recovered.

77. Grants and benefits

(1) A council may make a grant or provide a pecuniary benefit or a non-pecuniary benefit that is not a legal entitlement to any person, other than a councillor, for any purpose it considers appropriate.

(1A) A benefit provided under subsection (1) may include –

- (a) in-kind assistance; and
- (b) fully or partially reduced fees, rates or charges; and
- (c) remission of rates or charges under Part 9 .

(2) The details of any grant made or benefit provided are to be included in the annual report of the council.

Division 2 - Borrowings

78. Borrowings

- (1) A council, for the purpose of raising a loan or obtaining any form of financial accommodation, may decide by an absolute majority to provide any of the following forms of security:
 - (a) debentures;
 - (b) bills of sale, mortgages or other charges;
 - (c) inscribed stock;
 - (d) guarantees;
 - (e) any other document evidencing indebtedness other than bearer instruments.
- (2) A council may not raise a loan in any financial year exceeding any amount the Treasurer determines for that financial year.
- (3) In this section, *loan* includes any financing arrangement as determined by the Treasurer.

79. Debentures and inscribed stock

- (1) If a council proposes to issue debentures or inscribed stock for the purpose of raising money, it must –
 - (a) assign a distinguishing classification to the debentures or inscribed stock to be included in the issue so as to distinguish them from those included or to be included in previous or subsequent issues; and
 - (b) appoint a trustee for the holders of the debentures or inscribed stock if the debentures or stock are being offered generally to members of the public.
- (2) The holders of debentures or inscribed stock of a particular classification rank equally and have priority over the holders of debentures or inscribed stock included in a subsequent issue.
- (3) If a council defaults in carrying out its obligations under a loan secured by debentures or inscribed stock charged on the general revenue of the council, the Supreme Court may, on the application of a creditor or trustee for the holders of the debentures or inscribed stock –
 - (a) direct the council to appropriate a specified portion of its revenue to the satisfaction of its obligations under the loan; or
 - (b) require the council to raise a specified amount by way of rates and order that the amount raised be applied towards satisfaction of the council's obligations under the loan; or
 - (c) give such other directions as are necessary or desirable.
- (4) The rights of the creditor or trustee under subsection (3) are in addition to any other right that exists independently of that subsection.
- (5) In this section, *debenture* includes any form of charge on the general revenue of a council.

80. Limit on borrowing

- (1) Except with the approval of the Minister, a council may not borrow additional money for any purpose if the annual payments required to service the total borrowings would exceed 30% of its revenue of the preceding financial year.
- (2) Grants made to a council for specific purposes are to be excluded in calculating 30% of revenue of the council.

Division 3 - Accounts and audit

81. Authorised deposit-taking institution accounts

A council may establish and maintain in its corporate name such authorised deposit-taking institution accounts as it considers necessary.

82. Estimates

- (1) The general manager must prepare estimates of the council's revenue and expenditure for each financial year.
- (2) Estimates are to contain details of the following:
 - (a) the estimated revenue of the council;
 - (b) the estimated expenditure of the council;
 - (c) the estimated borrowings by the council;
 - (d) the estimated capital works of the council;
 - (e) any other detail required by the Minister.
- (3) Estimates for a financial year must –
 - (a) be adopted by the council, with or without alteration, by absolute majority; and
 - (b) be adopted before 31 August in that financial year; and
 - (c) not be adopted more than one month before the start of that financial year.
- (4) A council may alter by absolute majority any estimate referred to in subsection (2) during the financial year.
- (5) A council may make adjustments to individual items within any estimate referred to in subsection (2) by a simple majority so long as the total amount of the estimate is not altered.
- (6) A council, by absolute majority, may authorise the general manager to make minor adjustments up to specified amounts to individual items within any estimate referred to in subsection (2) so long as the total amount of the estimate is not altered.
- (7) The general manager is to report any adjustment and an explanation of the adjustment at the first ordinary meeting of the council following the adjustment.

82A. Power of general manager to meet current and accruing requirements

- (1) If a council has not adopted before the end of a financial year, or considers that it is unlikely to so adopt, under section 82 , estimates for the next financial year, the council may authorise the general manager to issue and apply in accordance with this section such amounts as may be necessary to meet the current and accruing requirements of the council for the months of July and August in that financial year.
- (2) If authorised to do so by the council under subsection (1) , a general manager may issue and apply, in accordance with this section and any conditions specified by the council in the authorisation, such amounts as may be necessary to meet the current and accruing requirements of the council for the months of July and August in that financial year.
- (3) The authority of a general manager under this section to issue and apply amounts ceases on the adoption, by the council under section 82 , of estimates for the relevant financial year, and does not in any event extend beyond 31 August in that financial year.
- (4) All amounts issued and applied under this section are taken to have been issued and applied in accordance with the estimates later adopted by the council under section 82 for the relevant financial year.
- (5) Amounts issued and applied by the general manager under this section for any one month are not, in total, to exceed the amount that would be equivalent to the expenditure for the month of June of the immediately preceding financial year in respect of all salaries, pay, wages, allowances, contracts, supplies, services, rents, other charges and all ordinary contingencies of the council.
- (6) The issue or application of any amount under this section is to be issued or applied out of the cash reserves of the council.

83. Records

The general manager is to keep records of –

- (a) the transactions and activities of the council, council committees, special committees and controlling authorities; and
- (b) the assets and liabilities of the council.

84. Financial statements

- (1) The general manager is to prepare and forward to the Auditor-General a copy of the council's financial statements for each financial year in accordance with the Audit Act 2008 .
- (2) Any financial statement for a financial year is to—
 - (a)
 - (b) specify any interests as notified to the general manager of any councillor in respect of any body or organisation with which the council has major financial dealings; and
 - (c) contain a comparison between the council's actual and estimated revenue and expenditure for that financial year; and
 - (d) contain a statement of any revenue and expenditure of a council committee, a special committee or a controlling authority; and
 - (da) contain a statement of the operating, capital and competitive neutrality costs in respect of each significant business activity undertaken by the council during that financial year together with a statement of the revenue associated with that activity; and
 - (db) contain financial management indicators, and asset management indicators, specified in an order under subsection (2A) ; and
 - (e) contain any other information the Minister determines.
- (2A) The Minister, by order, may specify —
 - (a) financial management indicators; and
 - (b) asset management indicators —to be included in the financial statements of councils.
- (2B) The Minister is to consult with councils as to the matters to be included in an order under subsection (2A) .
- (3) The general manager is to certify that, in accordance with this Act and any other relevant Act, the financial statements fairly represent —
 - (a) the financial position of the council; and
 - (b) the results of the council's operations; and
 - (c) the cash flow of the council.
- (4) The general manager is to ensure that the certified financial statements are tabled at a meeting of the council as soon as practicable.
- (5) In this section —

competitive neutrality costs means the costs required to be taken into account under the competitive neutrality principles.

Division 4 - Audit panels

85. Audit panels

- (1) A council is to establish an audit panel in respect of the council.
- (2) An audit panel in respect of a council is to be constituted in accordance with the requirements, if any, of an order under section 85B .

85A. Functions of audit panels

- (1) An audit panel established under section 85 is to review the council's performance in relation to –
 - (a) the council's financial system, financial governance arrangements and financial management; and
 - (b) all plans of the council under Part 7 ; and
 - (c) all policies, systems and controls the council has in place to safeguard its long-term financial position; and
 - (d) any other matters specified in an order under section 85B as matters that an audit panel is to consider in such a review.
- (2) A council, audit panel or person is to comply with the requirements, specified in an order under section 85B , that apply in relation to the council, audit panel or person.

85B. Orders in relation to audit panels

- (1) The Minister, by order, may –
 - (a) specify the matters that, in addition to the matters specified in section 85A(1)(a) , (b) and (c) , are to be considered by an audit panel in a review for the purposes of section 85A ; and
 - (b) specify the requirements in accordance with which an audit panel under section 85 is to be constituted, including but not limited to the qualifications, or experience, or both, that a person who is a member of such a panel is required to have; and
 - (c) specify any other requirements relating to reviews, and audit panels, for the purposes of section 85A , including but not limited to the conduct of such reviews and the actions to be taken as a result of the holding of such reviews.
- (2) The Minister is to consult with councils as to the matters to be included in an order under subsection (1) .

PART 9 - Rates and Charges

Division 1 - General provisions

86. Interpretation of Part 9

In this Part –

adjustment factor means an adjustment factor determined under Part 9A of the Valuation of Land Act 2001 ;

assessed annual value means the assessed annual value as determined by the Valuer-General under the Valuation of Land Act 2001 and adjusted under this Act;

averaged area rate means an averaged area rate made under section 109A(1) ;

capital value means the capital value as determined by the Valuer-General under the Valuation of Land Act 2001 and adjusted under this Act;

category of rateable land means a category of rateable land specified in section 109A(5) ;

certificate means a certificate issued under section 109H ;

Consumer Price Index figure means the Consumer Price Index: All Groups Index Number for Hobart published by the Australian Statistician under the authority of the Census and Statistics Act 1905 of the Commonwealth;

fresh valuation means a fresh valuation made under the Valuation of Land Act 2001 ;

general rate means a rate made under section 90 ;

land means a parcel of land which is shown as being separately valued in the valuation list prepared under the Valuation of Land Act 2001 ;

land value means the land value as determined by the Valuer-General under the Valuation of Land Act 2001 and adjusted under this Act;

notice of variation means a notice referred to in section 108 ;

occupier means a person who has possession of land;

owner of land means a person whose name appears as the owner on a valuation roll prepared under the Valuation of Land Act 2001 ;

rate means a general rate, separate rate, construction rate and service rate and includes –

- (a) for the purposes of section 88A , a charge or an averaged area rate made under this Part; and
- (ab) for the purposes of Division 9 , a charge or an averaged area rate made under this Part; and
- (b) for the purposes of Divisions 10 and 11 –
 - (i) a charge or an averaged area rate made under this Part; and
 - (ii) any penalty imposed and interest charged under section 128 ;

ratepayer means the person liable to pay rates or an averaged area rate in respect of land in accordance with this Part;

rates notice means –

- (a) a supplementary notice under section 92 ; and
- (b) a notice under section 122 ;

rating authority means a council or other statutory authority authorised by law to make and levy rates or charges in respect of land in any defined area;

relevant right to occupation – see section 86AA ;

separate rate means a rate made under section 100 ;

service charge means a charge made under section 94 ;

service rate means a rate made under section 93 ;

strata scheme means a strata scheme as defined in the Strata Titles Act 1998 ;

supplementary valuation means a supplementary valuation made under the Valuation of Land Act 2001

86AA. Relevant right to occupation

- (1) For the purposes of this Part, a relevant right to occupation means –
 - (a) a relevant lease; or
 - (b) a private purposes licence.
- (2) For the purposes of this section, a relevant lease is a lease other than a lease, in relation to a seabed, that is granted and in force under Part 4 of the Marine Farming Planning Act 1995 .
- (3) For the purposes of this section, a private purposes licence, in relation to land, is a licence –
 - (a) that confers, either expressly or by implication, a right on the holder of the licence to exclude, from the land, a person other than the Crown; and
 - (b) that is not a licence primarily for the benefit of the Crown.
- (4) Without limiting the circumstances in which a licence is to be taken to confer a right on the holder of the licence to exclude, from the land, a person other than the Crown for the purposes of subsection (3) , a licence may be taken to confer such a right, despite a term or condition of the licence which states that it does not confer an exclusive right to occupy the land, if, on a proper construction of the licence, the term or condition is intended only to ensure that the Crown may not be excluded from the land.
- (5) For the purposes of subsection (3) , a licence is to be taken to be a licence primarily for the benefit of the Crown if –
 - (a) it is granted for the primary purpose of assisting the Crown –
 - (i) to perform its responsibilities to control weeds or pests on the land or other land; or
 - (ii) to reduce or manage vegetation so as to reduce the risk of the spread of bushfire on the land or other land; or
 - (iii) to beautify an area of land; or
 - (iv) to carry out another responsibility of the Crown that is of a prescribed type; or
 - (b) the licence is within a class of licences that is prescribed for the purposes of this paragraph.

86A. General principles in relation to making or varying rates

- (1) A council, in adopting policies and making decisions concerning the making or varying of rates, must take into account the principles that –
 - (a) rates constitute taxation for the purposes of local government, rather than a fee for a service; and
 - (b) the value of rateable land is an indicator of the capacity of the ratepayer in respect of that land to pay rates.
- (2) Despite subsection (1) , the exercise of a council's powers to make or vary rates cannot be challenged on the grounds that the principles referred to in that subsection have not been taken into account by the council.

86B. Rating and charging policies to be made available to public

- (1) A council must adopt a rates and charges policy by 31 August 2012.

- (2) A council's rates and charges policy must contain –
 - (a) a statement of the policy that the council intends to apply in exercising its powers, or performing its functions, under this Part; and
 - (b) a statement of policy in respect of prescribed matters, if any.
- (3) A council's rates and charges policy in relation to the making or varying of a rate must take into account the principles referred to in section 86A(1) .
- (4) A council must review its rates and charges policy –
 - (a) by the end of each successive 4-year period after 31 August 2012; and
 - (b) at the same time as, or before, making a type of rate, charge or averaged area rate in respect of a financial year, if a rate, charge or averaged area rate of that type was not made in respect of the previous financial year; and
 - (c) at the same time as, or before, making under section 107 a variation of a rate or charge in respect of a financial year, if such a variation of that rate or charge was not made in respect of the previous financial year; and
 - (d) at the same time as, or before, setting a minimum amount under this Part; and
 - (e) at the same time as, or before, altering the circumstances in which a rate, charge or averaged area rate, or a variation of a rate or charge, is to apply to rateable land.
- (5) A council, as soon as reasonably practicable after adopting or altering its rates and charges policy, must make copies of the policy as so adopted or altered available to the public –
 - (a) in paper form, on payment of a reasonable charge; and
 - (b) in electronic form, at a website of the council, free of charge.
- (6) A rate, averaged area rate or charge is not invalid by reason only that it does not conform to the council's rates and charges policy.

87. Exemption from rates

- (1) All land is rateable except that the following are exempt from general and separate rates, averaged area rates, and any rate collected under section 88 or 97 :
 - (a) land owned and occupied exclusively by the Commonwealth;
 - (b) land held or owned by the Crown that is not land to which a relevant right to occupation relates and that is land that –
 - (i) is a national park, within the meaning of the Nature Conservation Act 2002 ; or
 - (ii) is a conservation area, within the meaning of the Nature Conservation Act 2002 ; or
 - (iii) is a nature recreation area, within the meaning of the Nature Conservation Act 2002 ; or
 - (iv) is a nature reserve, within the meaning of the Nature Conservation Act 2002 ; or
 - (v) is a regional reserve, within the meaning of the Nature Conservation Act 2002 ; or
 - (vi) is a State reserve, within the meaning of the Nature Conservation Act 2002 ; or
 - (vii) is a game reserve, within the meaning of the Nature Conservation Act 2002 ; or
 - (viii)
 - (ix) is a public reserve, within the meaning of the Crown Lands Act 1976 ; or
 - (x) is a public park used for recreational purposes and for which free public access is normally provided; or
 - (xi) is a road, within the meaning of the Roads and Jetties Act 1935 ; or

- (xii) is a way, within the meaning of the Local Government (Highways) Act 1982 ; or
- (xiii) is a marine facility, within the meaning of the Marine and Safety Authority Act 1997 ; or
- (xiv) supports a running line and siding within the meaning of the Rail Safety National Law (Tasmania) Act 2012 ;

(ba) land, held or owned by the Crown, that is a seabed –

(i) on land to which relates a lease granted and in force under Part 4 of the Marine Farming Planning Act 1995 ; or

(ii) on land, if no lease (other than a lease referred to in subparagraph (i)), or licence, has been granted by the Crown in relation to the land and is in force; or

(c) land owned by the Hydro-Electric Corporation or land owned by a subsidiary, within the meaning of the Government Business Enterprises Act 1995 , of the Hydro-Electric Corporation on which assets or operations relating to electricity infrastructure, within the meaning of the Hydro-Electric Corporation Act 1995 , other than wind-power developments, are located;

(d) land or part of land owned and occupied exclusively for charitable purposes;

(da) Aboriginal land, within the meaning of the Aboriginal Lands Act 1995 , which is used principally for Aboriginal cultural purposes;

(e) land or part of land owned and occupied exclusively by a council.

(2) The owner of any land referred to in subsection (1) may agree to pay general or separate rates or an averaged area rate.

(3) Land occupied by a joint authority or single authority to which Part 3A applies is not exempt from rates or averaged area rates.

(4)

88. Rates collected on behalf of authorities

(1) A statutory authority which has power to make rates based on the valuation list under the Valuation of Land Act 2001 may enter into an agreement with a council for the council to collect the rates on its behalf.

(2) An agreement may contain a provision that the statutory authority is to pay the council a commission for the collection of the rates.

(3) If a council agrees to collect rates on behalf of a statutory authority, the council may –

(a) incorporate the rates with its own rates; and

(b) recover the rates under Division 10 as if they were a debt due to the council.

88A. Capping of rate increases

(1) A council, by absolute majority, may, in making a rate under this Part –

(a) set a maximum percentage increase in any or all of the rates payable on any rateable land within its area; and

(b) declare that a maximum percentage increase set under paragraph (a) varies within the municipal area or within different parts of the municipal area according to any or all, or a combination of any or all, of the factors specified in section 107 .

(2) For the purposes of subsection (1) , a council may –

(a) grant a remission under section 129 ; and

(b) fix conditions that are to apply in order for a ratepayer, or class of ratepayers, to qualify for a maximum percentage increase.

(3) Regulations may be made under this Act in relation to the setting and application of a maximum percentage increase in a rate.

89. Adjustments to values

(1) The Valuer-General, with the approval of the Minister, may determine that the assessed annual value, capital value or land value of land –

- (a) in a newly created municipal area; or
- (b) in a municipal area any boundary of which has been varied –

is to be amended so as to accord with the most recent values prevailing in the municipal area.

(2) Any amendment made under subsection (1) applies until a fresh valuation is made in respect of the municipal area under the Valuation of Land Act 2001 or is subject to an adjustment factor provided by the Valuer-General under Part 9A of that Act.

89A. Values under Valuation of Land Act 2001 to be used as basis of rates

(1)

(2) For the purposes of any other enactment relating to the assessment, imposition or levying of any rate required to be assessed with reference to, or imposed or levied on –

- (a) the land value; or
- (b) the capital value; or
- (c) the assessed annual value or any portion of the assessed annual value as determined by the Valuer-General under section 11(3)(c) of the Valuation of Land Act 2001 –
- (d)

of any land, a rate is to be assessed, imposed or levied, as the case may be, on or with reference to the values appearing in the valuation lists under section 45 of the Valuation of Land Act 2001 as last provided by the Valuer-General before the first day of the period in respect of which the rate is assessed, imposed or levied.

(2A) In subsection (2) , a reference to the values appearing in the valuation lists is taken to be a reference to those values as affected by any adjustment factors provided by the Valuer-General.

(3) Where a valuation is altered or a supplementary valuation is made, it is to take effect and the value so determined is to be used instead of the relevant value required by subsection (2) , in accordance with the following rules:

- (a) where a valuation is altered or an adjustment factor is varied by the Valuer-General consequent on any of the following actions:
 - (i) the allowance of an objection under section 30 of the Valuation of Land Act 2001 ;
 - (ii) an order of the Land Valuation Court under Part 7 of that Act;
 - (iii) an order of the Supreme Court under section 40 of that Act;
 - (iv) a review of an adjustment factor under section 50B(1) of that Act –

the altered valuation or the variation of the adjustment factor has effect on and from the date on which the valuation or the adjustment factor objected to would have taken effect;

(b) where a supplementary valuation has been made as required by section 18(1) of the Valuation of Land Act 2001 , it has effect –

- (i) where the event on which the supplementary valuation became necessary occurred before the commencement of the rating period in which the relevant supplementary valuation list is provided to the rating authority, from the commencement of that period; and
- (ii) where the event on which the supplementary valuation became necessary occurred during the rating period in which the relevant supplementary valuation list is provided to the rating

authority, from the date of the event;

(c) where a supplementary valuation has been made in accordance with section 21(1)(a), (b) or (c) of the Valuation of Land Act 2001, it has effect –

(i) on and from the date on which the land became subject to the relevant rate, in a case where that date is after the commencement of the rating period in which the relevant supplementary valuation list is provided to the rating authority; and

(ii) in any other case, from the commencement of that rating period;

(d) where a supplementary valuation has been made in accordance with section 21(1)(d), (e) or (f) of the Valuation of Land Act 2001, it has effect, except as provided in paragraphs (e) and (f) of this subsection –

(i) on and after the date of the valuation, in a case where that date is after the commencement of the rating period in which the relevant supplementary valuation list is provided to the rating authority; and

(ii) in any other case, from the commencement of that rating period;

(e) where a supplementary valuation has been made under section 21(1)(e) of the Valuation of Land Act 2001 owing to the erection of a building, it has effect –

(i) on and after the date of occupation of the building, if that date is after the commencement of the rating period in which the relevant supplementary valuation list is provided to the rating authority; and

(ii) on and after the date of the valuation, if that date is not after the date of occupation of the building but is after the commencement of that rating period; and

(iii) from the commencement of that rating period, if that commencement is on or after the date of the valuation;

(f) where a supplementary valuation has been made under section 21(1)(f) of the Valuation of Land Act 2001 for the purpose of rectifying an error, it has effect –

(i) on and from the date on which the error occurred, in a case where that date is after the commencement of the rating period in which the relevant supplementary valuation list is provided to the rating authority; and

(ii) in any other case, from the commencement of that rating period.

(4) Where a supplementary valuation is made under section 18(1) of the Valuation of Land Act 2001 and the value of the land so valued has since the last relevant valuation been materially increased by reason of improvements, paragraph (d) or (e) of subsection (3) of this section applies to it and not paragraph (b) of that subsection.

(4A) Where supplementary valuations are made under section 18(1) of the Valuation of Land Act 2001 as a result of a subdivision, the general manager may apportion any unpaid rates, averaged area rates or charges, or penalties imposed or interest charged, under section 128 in proportion to the supplementary valuations on the land now subdivided.

(5) This section does not apply in a case where provision to the contrary is made in another enactment.

89B. Relevant percentages for purposes of minimum amounts

(1) For the purposes of section 90(5)(a) and section 107(2B)(a), the relevant percentage in respect of a council for the 2012-2013 financial year is –

(a) 50%; or

(b) another higher percentage for that financial year that has been determined, in an order under subsection (8) in respect of the council, for the purposes of that provision.

- (2) For the purposes of section 90(5)(b) and section 107(2B)(b) , the relevant percentage in respect of a council for a financial year to which those provisions apply is –
- (a) 35%; or
 - (b) another higher percentage for that financial year that has been determined, in an order under subsection (8) in respect of the council, for the purposes of that provision.
- (3) A council may apply to the Minister for the issue under subsection (8) of an order in relation to the council.
- (4) An application under subsection (3) by a council for an order is to specify –
- (a) the financial year, or financial years, in respect of which the order is sought; and
 - (b) the provision or provisions, referred to in subsection (1) or (2) , in respect of which the order is sought; and
 - (c) the percentage amount that the council is of the opinion ought to be determined in respect of a financial year, and a provision, in respect of which the order is sought; and
 - (d) information as to why the council is of the opinion that the grounds, specified in subsection (7) , for the Minister to make the order are satisfied.
- (5) The Minister may request the council to provide to the Minister the further information, in relation to an application by the council under subsection (3) , that the Minister requests.
- (6) The Minister may, after receiving an application under subsection (3) from a council –
- (a) make an order under subsection (8) in relation to the application; or
 - (b) refuse to make an order under subsection (8) in relation to the application.
- (7) The Minister may only make an order under subsection (8) in relation to an application from a council if he or she is satisfied that it is desirable to do so to ensure that there will not be an unreasonably sudden and significant increase in the amount of rates payable by some ratepayers in the municipal area of the council.
- (8) The Minister, by order, may determine that, for the purposes of a provision referred to in subsection (1) or (2) the relevant percentage in respect of a council is, for a financial year, the percentage specified, in the order, in respect of the financial year.
- (9) An order under subsection (8) may –
- (a) apply to one or more provisions referred to in subsection (1) or (2) ; and
 - (b) apply to one or more financial years; and
 - (c) specify the same, or different, relevant percentages for different financial years; and
 - (d) specify, for the purposes of a provision specified in the order, a percentage that is higher than the percentage specified in subsection (1)(a) or subsection (2)(a) .

Division 2 - General rates

90. General rate

- (1) A council may, not earlier than 1 June and not later than 31 August in any year, in respect of each financial year, make one general rate for that year on all rateable land in its municipal area.
- (2) A council may make a general rate on rateable land whether or not it provides any services in respect of that land.
- (3) A general rate is to be based on one of the following categories of values of land:
- (a) the land value of the land;
 - (b) the capital value of the land;
 - (c) the assessed annual value of the land.

(4) In making a general rate, a council may set a minimum amount payable in respect of that rate if that rate does not include a fixed charge.

(5) A minimum amount payable in respect of a general rate may not be set by a council under subsection (4) if the minimum amount would –

(a) in respect of the 2012-2013 financial year, apply to more than the relevant percentage in respect of the council, as determined under section 89B for that financial year, of the number of areas of land that is rateable land to which no variation under section 107 of the general rate applies; or

(b) in respect of any other financial year, apply to more than the relevant percentage in respect of the council, as determined under section 89B for that financial year, of the number of areas of land that is rateable land to which no variation under section 107 of the general rate applies.

91. Composition of general rate

(1) A general rate may consist of 2 components –

(a) one which is based on the value of the rateable land; and

(b) the other which is a fixed charge.

(2) If a council makes a general rate which consists of the 2 components, the fixed charge –

(a) must apply equally to each rateable land assessment; and

(b) must be calculated so that the total revenue raised from it does not exceed an amount equal to 50% of the council's general rates for the year to which the fixed charge relates.

92. Adjustment of amount payable

(1) If, during a financial year, a supplementary valuation is made of any land, a council may adjust the amount payable in respect of any rate for that land for that financial year.

(2) The general manager is to issue a supplementary notice in accordance with section 122 in respect of any amount payable as a result of an adjustment under this section.

(3) The general manager may refund or give credit for any amount paid in respect of a rate in excess of the amount payable as a result of an adjustment under this section.

Division 3 - Service rates and service charges

93. Service rate

(1) A council may make a service rate for a financial year on rateable land for any, all or a combination of the following services:

(a)

(b)

(c) nightsoil removal;

(d) waste management;

(e) stormwater removal;

(f) fire protection;

(g) any other prescribed service.

(2) A service rate for a financial year is to be based on the same category of value of land as the general rate is based on under section 90 (3) for that financial year.

(3) In making a service rate, a council may set a minimum amount payable in respect of that rate.

(4) A council must not make a service rate for a service referred to in subsection (1) in respect of land owned by the Crown if the council does not supply that service to that land.

(5) For the purpose of this Part, establishing, managing, providing or rehabilitating waste management facilities is to be taken to be part of –

(a) a waste management service; and

(b) the supplying, or making available, of waste management services to land.

93A. Service rate for fire protection

(1) A council may make a service rate or several service rates in respect of the fire service contributions it must collect under the Fire Service Act 1979 .

(2) A service rate or service rates made under subsection (1) must be for the contribution specified in a notice issued under section 81B of the Fire Service Act 1979 .

94. Service charge

(1) In addition to, or instead of, making a service rate under section 93 , a council, when making a general rate in respect of a financial year, may make a separate service charge for that financial year for any or all of the services specified in that section which the council supplies or makes available.

(2)

(2A)

(3) A council may, by absolute majority, declare that a service charge varies within different parts of the municipal area according to any or all, or a combination of any or all, of the factors specified in section 107 .

(3A) In addition to the powers conferred on a council under subsection (3) , a council may, by absolute majority, vary a service charge according to the level of service provided.

(4) A council must not make a service charge for a service referred to in section 93 (1) in respect of land owned by the Crown if the council does not supply that service to that land.

(5)

94A.

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95. General provisions

(1)

(2)

(3)

(3A)

(4)

(5)

(6)

(7) A council may recover from a council in another municipal area, with that other council's agreement, any costs incurred by it for any service specified in section 93(1) that it provides in that municipal area.

Division 4 - Construction rates and charges

96. Interpretation of Division 4

For the purposes of this Division –

public stormwater system means a public stormwater system as defined in the *Urban Drainage Act 2013*.

97. Construction rate and charge

- (1) A council, when making a general rate in respect of each financial year, may make a construction rate or construction charge for that financial year in respect of land that is more than 30 metres, at the nearest boundary, from the public stormwater system.
- (2) A council may make a construction rate or construction charge in respect of land even though the land is not connected to a public stormwater system at the time the rate or charge is made.
- (3) A construction rate for a financial year is to be based on the same value of land as the general rate is based on under section 90 (3) for that financial year.

98. Limit on construction rates and charges

- (1) The amount of a construction rate or construction charge in respect of land that is within 30 metres of a public stormwater system is not to exceed one-half of the service rate or service charge applicable to that land.
- (2) A construction rate or construction charge is to apply for any period not exceeding 5 years.

99. Rebates and discount

A council is to rebate or discount a proportional amount of any construction rate or construction charge paid or payable for a financial year in respect of land if during that financial year—

- (a) the land is connected to a public stormwater system; or
- (b) there is a public stormwater system within 30 metres of the nearest boundary of that land.

Division 5 - Separate rates and charges

100. Separate rate or charge

- (1) A council may, by absolute majority, make a separate rate or separate charge in respect of land, or a class of land, within a part of its municipal area.
- (2) A separate rate or separate charge may be made –
 - (a) in addition to any other rates or charges; and
 - (b) in respect of a financial year or part of a financial year; and
 - (c) for the purpose of planning, carrying out, making available, maintaining or improving any thing that in the council's opinion is, or is intended to be, of particular benefit to –
 - (i) the affected land; or
 - (ii) the owners or occupiers of that land.
- (3) A separate rate or separate charge must not be made more than one month before the beginning of the financial year in which it commences, but may otherwise be made at any time during a financial year.
- (3A) A separate rate or separate charge applies from –
 - (a) a date specified by the council that is after the date on which it is made; or
 - (b) a date specified by the council that is before the date on which it is made if that date is stated in the notification referred to in section 101(2) ; or
 - (c) if a date is not specified, the date on which it is made.
- (4) At the time of making a general rate, a council may, upon the resolution of an absolute majority, continue a separate rate or separate charge applying in respect of a financial year for the next financial year.
- (5) A separate rate or separate charge cannot be continued beyond the period notified under section 101(2)(d) .
- (6) If a separate rate or separate charge is not continued for a particular financial year, the separate rate or separate charge must not be continued in respect of a subsequent financial year.

(7) A separate rate or separate charge must not be continued for a period of more than 5 financial years unless, in the fifth financial year –

- (a) the council resolves to continue the separate rate or separate charge under subsection (4) ; and
- (b) the separate rate or separate charge is reviewed in accordance with section 105A .

(8) A separate rate or separate charge for a financial year is to be based on the same category of value of land as is applicable to the general rate for that financial year under section 90 (3) .

101. Intention to make separate rate or charge

(1) Before the council makes a separate rate or separate charge, including a separate rate first-mentioned in section 105 , the general manager is to–

- (a) make all reasonable attempts to notify all ratepayers likely to be affected by the making of the separate rate or separate charge; and
- (b) notify the council's intention to make the separate rate or separate charge in a daily newspaper circulating in the municipal area.

(2) A notification is to –

- (a) state the area to which the separate rate or separate charge is to apply; and
- (b) state the purpose for which the separate rate or separate charge is to apply; and
- (c) state the amount of the separate rate or separate charge; and
- (ca) state the date from which the separate rate or separate charge is to apply if that date is before the date on which it is made; and
- (d) state the period during which the separate rate or separate charge is to apply; and
- (e) invite the ratepayers, owners and occupiers of affected land to make submissions in accordance with section 102 ; and
- (f) advise that ratepayers of affected land may present a petition under section 103 .

(3) This section does not apply to the continuation of a separate rate or separate charge under section 100(4) .

102. Submissions

A submission relating to a separate rate or separate charge–

- (a) is to be in writing; and
- (ab)
- (b) is to be lodged with the general manager within 30 days of the date on which a notification is made in a newspaper under section 101 .

103. Petitions

(1) Ratepayers affected by the intention of a council to make a separate rate or separate charge may lodge a petition in accordance with section 57 to the council within 30 days of the date on which a notification is made in a newspaper under section 101 .

(2) If at least 100 affected ratepayers or at least 10% of affected ratepayers, whichever is the lesser, present a petition, the council must arrange a public meeting to discuss the issues involved.

104. Consideration by council

A council must consider any submission, petition or results of a public meeting before deciding –

- (a) whether or not to make a separate rate or separate charge; or
- (b) the area to which the separate rate or separate charge is to apply; or

- (c) the amount of the separate rate or separate charge; or
- (d) the period during which the separate rate or separate charge is to apply.

105. Separate rate or charge for same purpose

A council must not make a separate rate or separate charge for the same, or substantially the same, purpose as that of a separate rate or separate charge that the council has applied at any time in the previous 5 financial years unless it conducts a review of that previous separate rate or separate charge in accordance with section 105A .

105A. Review of separate rate or charge

(1) A review of a separate rate or separate charge is to include an assessment of the particular benefit of the separate rate or separate charge to –

- (a) the affected land; or
- (b) the owners or occupiers of that land.

(2) Before undertaking a review, the council is to –

- (a) notify the ratepayers of the affected land of its intention to conduct the review; and
- (b) publish notification of that intention in a daily newspaper circulating in its municipal area.

(3) Notification published under subsection (2)(b) is to include an invitation to the ratepayers, owners and occupiers of the affected land to make written submissions in respect of the review within 30 days after publication of the notification.

(4) In deciding, following a review under this section, whether or not to make or continue a separate rate or separate charge, a council must take into account –

- (a) any submissions made under subsection (3) ; and
- (b) the outcomes of the review.

105B. Adjustment of separate rate or charge

If a separate rate or separate charge applies for more than one financial year, a council may adjust the separate rate or separate charge in a subsequent financial year to take account of any of the following factors:

- (a) an increase in the Consumer Price Index figure for the previous financial year;
- (b) an adjustment in the assessed annual value, capital value or land value, on which the separate rate is based, made –
 - (i) under this Act; or
 - (ii) as a result of a fresh valuation under the Valuation of Land Act 2001 ;
- (c) any other prescribed matter.

106. Refund of separate rate or charge

(1) A council is to refund any revenue raised by the payment of a separate rate or separate charge to affected ratepayers if–

- (a) the council resolves not to carry into effect the purpose for which the separate rate or separate charge was imposed; or
- (b) there is an excess of funds over the amount required for that purpose.

(2) Any refund is to be paid to the affected ratepayers proportionally according to the amounts paid by each of them.

(3) Instead of refunding an amount to a ratepayer, a council may credit that amount against any other rate or charge payable by the ratepayer.

106A. Exemptions and variations

- (1) A council, by absolute majority, may –
 - (a) exempt land or a class of land from a separate rate or separate charge; or
 - (b) vary the amount of a separate rate or separate charge payable in respect of land or a class of land, having regard to –
 - (i) the use or predominant use of the land or class of land; or
 - (ii) the non-use of the land; or
 - (iii) the locality of the land or class of land; or
 - (iv) any other prescribed factor.
- (2) In this section,
use has the same meaning as in section 107 .

Division 6 - Variation in rates

107. Variation in rates

- (1) A council, by absolute majority, may declare that the general rate, a service rate or a service charge varies within the municipal area or within different parts of the municipal area according to any or all, or a combination of any or all, of the following factors:
 - (a) the use or predominant use of the land;
 - (b) the non-use of the land;
 - (c) the locality of the land;
 - (d) any planning zone;
 - (e) any other prescribed factor.
- (2) For the purposes of subsection (1) (a) , *use* means use for any of the following purposes:
 - (a) residential purposes;
 - (ab) commercial purposes;
 - (ac) industrial purposes;
 - (b) public purposes;
 - (c) primary production;
 - (d) sporting or recreation facilities;
 - (e) quarrying or mining.
- (2A) If a general rate is varied under subsection (1) according to a factor, the council may, if the general rate does not include a fixed charge, set a minimum amount payable in respect of that rate as varied in accordance with that factor.
- (2B) A council may not set under subsection (2A) a minimum amount payable in respect of a general rate varied under subsection (1) in accordance with a factor if the minimum amount would –
 - (a) in respect of the 2012-2013 financial year, apply to more than the relevant percentage in respect of the council, as determined under section 89B for that financial year, of the number of areas of land that is rateable land to which that factor relates; or
 - (b) in respect of any other financial year, apply to more than the relevant percentage in respect of the council, as determined under section 89B for that financial year, of the number of areas of land that is rateable land to which that factor relates.

(2C) If a minimum amount payable in respect of a general rate is set under subsection (2A) and that minimum amount applies in relation to rateable land, a minimum amount, if any, set under section 90(4) in respect of the general rate does not apply in relation to the rateable land.

(3) A council must not apply a higher general rate on a State Government body than it would apply on a body of a similar nature that is not a State Government body.

(4) In this section –

Government Business Enterprise has the same meaning as in the Government Business Enterprises Act 1995 ;

State Government body means a State Service Agency, a statutory authority, a State-owned company or a Government Business Enterprise;

State-owned company means a company incorporated under the Corporations Act that is controlled by the Crown, a Government Business Enterprise or a statutory authority or another company that is so controlled;

statutory authority means a body or authority, whether incorporated or not, that is established or constituted by or under an Act or under the Royal Prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority but does not include a State Service Agency.

108. Notification of variation

If a council varies a rate, the general manager must notify the ratepayer in a rates notice –

- (a) of the rate as varied; and
- (b) of the factor on which the variation of the rate was calculated; and
- (ba) of the minimum amount, if any, set under section 107(2A) in relation to the variation; and
- (c) of the date on which the variation takes effect.

109. Objections to variations

- (1) A ratepayer may object to a variation in a rate based on a particular use of land.
- (2) The only ground for an objection is that the use of the ratepayer's land is not the use of land on which the variation is based.
- (3) An objection is to –
 - (a) be made in writing within 21 days after receipt of a notice under section 108 notifying the variation; and
 - (b) state the use of the ratepayer's land; and
 - (c) be accompanied by evidence of the use of the land; and
 - (d) be lodged with the general manager.
- (4) A council is to make a decision in respect of an objection within 60 days after the objection is lodged.
- (5) The council may decide that the variation in the rate –
 - (a) applies to the ratepayer based on the use of the ratepayer's land; or
 - (b) does not apply because of the use of the ratepayer's land.
- (6) A ratepayer may apply to the Magistrates Court (Administrative Appeals Division) for a review of –
 - (a) a council's decision under subsection (5) ; or
 - (b) a council's failure to make a decision under subsection (5) ; or
 - (c) a council's failure to make a decision within the period specified in subsection (4) .

(7) If the council does not make a decision in respect of an objection within 60 days after the objection is lodged, the council is taken to have made a decision in respect of that objection on the last day of that period.

Division 6A - Averaged area rates

109A. Averaged area rates may be made for locality

(1) A council, on the same day as the day on which it makes a general rate in respect of a financial year, may make, in respect of the financial year, an averaged area rate.

(2) An averaged area rate is to apply to a category of rateable land in a locality within the municipal area of the council.

(3) A council may only make under subsection (1) in respect of a financial year an averaged area rate that applies to a category of rateable land in a locality if authorised by a certificate to do so.

(4) A council may make under subsection (1) an averaged area rate that applies to a category of rateable land in a locality whether or not the council provides any services in respect of land in the locality.

(5) The categories of rateable land are the following:

(a) rateable land that is used, or predominantly used, for residential purposes;

(b) rateable land that is –

(i) used, or predominantly used, for residential purposes; and

(ii) of a value that is within a range of values of land;

(c) rateable land that may be classified as both –

(i) being used, or predominantly used, for residential purposes; and

(ii) non-use land.

(6) The general rate in respect of a financial year is not payable in relation to rateable land, in a locality, in relation to which an averaged area rate is payable in respect of that financial year.

109B. Determination of amount of averaged area rate

(1) In this section –

applicable area of land, in relation to an averaged area rate, means an area of land that is rateable land in a locality and that is within the category of rateable land, in the locality, to which the rate applies.

(2) The amount of an averaged area rate must be expressed in dollars or in dollars and cents.

(3) The amount of an averaged area rate must be the amount obtained by dividing, by the number of applicable areas of land, the sum of all the relevant amounts in relation to the applicable areas of land.

(4) For the purposes of subsection (3), the relevant amount in relation to an applicable area of land is the amount of the general rate that would be payable in respect of the land if the general rate applied in respect of the land for the financial year for which the averaged area rate is to apply.

(5) For the purposes of subsection (4), the calculation, in relation to an applicable area of land, of the general rate payable in relation to land for the financial year in respect of which the averaged area rate is to apply must be made on the basis of the valuation that had effect in relation to the land immediately before that averaged area rate is made.

(6) For the purposes of subsection (5), a supplementary valuation, of an area of land, that is made after the averaged area rate is made is not to be taken under section 89A to have effect in relation to the land immediately before that averaged area rate is made.

(7) The same category of value of land as the general rate is based on under section 90(3) in respect of a financial year must be used in determining –

(a) the relevant amount for the financial year in respect of an applicable area of land; and

(b) whether the value of an applicable area of land is within a range of values of land.

109C. Public notice to be given of proposal to obtain authority to make averaged area rates

(1) The general manager of a council that proposes to apply for a certificate is to ensure that a notice of the proposal is published in a daily newspaper circulating in the council's municipal area.

(2) A notice for the purposes of subsection (1) is to –

(a) specify that it is proposed to apply for a certificate authorising the making, in respect of each financial year, of an averaged area rate that is to apply in respect of that financial year to a category of rateable land in a locality within the municipal area of the council; and

(b) specify the locality to which the proposal relates; and

(c) specify the category of rateable land to which the proposal relates, including, if the category is referred to in section 109A(5)(b), the range of values of land within the category; and

(d) specify the reasons why the council intends to impose on a ratepayer a rate that is based on an averaging of the value of all rateable land to which the rate is to apply rather than a rate based on the value of the ratepayer's land; and

(e) include a statement as to how the amount of an averaged area rate is calculated; and

(f) invite interested persons to make, within 21 days from the date on which the notice is published, written submissions in respect of the proposal; and

(g) invite interested persons to attend, on the date, and at a place, specified in the notice, a public meeting, in relation to the proposal, that is to be held in accordance with section 109F.

(3) A date that is specified in a notice in relation to a proposal in accordance with subsection (2)(g) is to be at least 21 days after –

(a) the issue of the notice; and

(b) the giving of notice under section 109D in relation to the proposal.

(4) The general manager of the council is to ensure that –

(a) a copy of a notice published under subsection (1) is available for inspection, without charge, and for purchase, for a reasonable charge, at the offices of the council; and

(b) a copy of the notice may be viewed at a website of the council –

on and from the date on which the notice is published, for a period of at least 12 months from that date.

109D. Notice of proposal to be given to certain ratepayers

(1) The general manager of a council that proposes to apply for a certificate in relation to a locality is to ensure that a notice of the proposal is issued to each relevant ratepayer.

(2) For the purposes of subsection (1), a relevant ratepayer is a ratepayer in respect of rateable land in relation to which, in the opinion of the general manager of the council, the averaged area rate to which the proposal to apply for a certificate relates would apply if the rate were made in accordance with the proposal.

(3) For the purposes of subsection (1), a notice, issued to a relevant ratepayer in respect of rateable land, in relation to a proposal to apply for a certificate –

(a) is to contain, in relation to the proposal, the matters a notice in accordance with section 109C(2) is required to contain; and

(b) is to contain the additional calculations in respect of the rateable land.

(4) For the purposes of subsection (3)(b), the additional calculations in respect of the rateable land are –

(a) the amount of the general rate that the relevant ratepayer in respect of the land was, in respect of the relevant financial year, liable to pay in relation to the land; and

(b) the amount of the averaged area rate that the relevant ratepayer would have been liable to pay, in respect of the relevant financial year, if the averaged area rate to which the proposal relates had applied in respect of the rateable land for the relevant financial year.

(5) A reference in subsection (4) to the relevant financial year is a reference to the financial year in which the notice, containing the additional calculations referred to in that subsection, is issued to a ratepayer under subsection (1) .

(6) Brighton Council, George Town Council and Glamorgan-Spring Bay Council are exempted from the application of subsection (3)(b) in relation to a proposal to apply for a certificate, if the certificate would authorise the making of an averaged area rate in respect of the 2012-2013 financial year.

109E. Submissions in respect of proposal

(1) A person may make a written submission to a council in relation to a proposal by the council to obtain a certificate.

(2) A submission may only be made under subsection (1) in relation to a proposal within 21 days after the publication of the notice in relation to the proposal in accordance with section 109C .

(3) The general manager of a council that has published a notice in relation to a proposal in accordance with section 109C is to ensure that a document, summarising each submission made under subsection (1) in relation to the proposal, is prepared and copies of the document are made available –

(a) to persons attending the meeting, in relation to the proposal, that is held in accordance with section 109F ; and

(b) for inspection, without charge, and for purchase, for a reasonable charge, at the offices of the council as soon as practicable after the day on which the document is prepared, for a period of at least 3 months from that day; and

(c) for viewing at a website of the council as soon as practicable after the day on which the document is prepared, for a period of at least 3 months from that day.

109F. Public meeting in respect of proposal to be held

(1) A council that has published in accordance with section 109C a notice in relation to a proposal to obtain a certificate must hold a public meeting in relation to the proposal.

(2) The public meeting in relation to a proposal to obtain a certificate is to be held on the date, and at the place, that are specified, in accordance with section 109C(2)(g) , in the notice.

(3) After a public meeting is held in accordance with this section in relation to a proposal by a council to obtain a certificate, a record of –

(a) the document prepared in accordance with section 109E(3) in relation to the proposal; and

(b) any relevant issues raised at the public meeting –

is to be contained in the minutes of the next ordinary meeting of the council.

109G. Applications for certificates

(1) A council may apply to the Director for the issue of a certificate.

(2) An application under subsection (1) by a council is to specify –

(a) the locality, in the municipal area of the council, to which the application relates; and

(b) the category of rateable land to which the application relates, including, if the category is referred to in section 109A(5)(b) , the range of values of land within the category.

(3) A council must consider the record, referred to in section 109F(3) , in relation to a proposal to apply for a certificate, before deciding –

(a) whether or not to apply for the certificate; and

- (b) the area that is to comprise the locality for the purposes of the application; and
- (c) if the proposal relates to a category of rateable land referred to in section 109A(5)(b) , the range of values of land to which the application relates.

109H. Certificates

- (1) The Director, after receiving an application from a council under section 109G , may determine the application by –
 - (a) issuing a certificate to the council; or
 - (b) refusing to issue a certificate to the council.
- (2) The Director may require a council to provide further information in relation to an application from the council under section 109G .
- (3) The Director is to make a determination under subsection (1) in relation to an application under section 109G –
 - (a) within 21 days of receiving the application; or
 - (b) if the Director has required the council to provide further information under subsection (2) , within 21 days of receiving the further information.
- (4) A certificate is to specify –
 - (a) the council to which the certificate is issued; and
 - (b) the locality to which the certificate relates; and
 - (c) the category of rateable land to which the certificate relates, including, if the category is referred to in section 109A(5)(b) , the range of values of land that is within the category; and
 - (d) that the council is authorised to make, in respect of each financial year, an averaged area rate that is to apply, in respect of that financial year, to the category of rateable land in the locality.
- (5) The Director may only issue a certificate in relation to a category of rateable land in a locality if the Director is satisfied that the requirements of sections 109C , 109D , 109E and 109F have been substantially complied with in respect of a proposal to apply for a certificate in relation to that category of rateable land in that locality.
- (6) The Director may be satisfied that sections 109C , 109D , 109E and 109F have been substantially complied with in respect of a proposal to apply for a certificate in relation to a category of rateable land in a locality, and issue a certificate accordingly, even though –
 - (a) the locality specified in the certificate is not the same as the locality to which the proposal relates, if the locality is substantially the same as, or within the area of land contained in, the locality to which the proposal relates; and
 - (b) where the category is referred to in section 109A(5)(b) , the range of values of land that is within the category specified in the certificate is not the same as the range of values of land to which the proposal relates, if, in the opinion of the Director, the range of values of land is not substantially wider or narrower.
- (7) A certificate authorises the council to which it is issued to make, in respect of each financial year, an averaged area rate that is to apply, in respect of that financial year, to the category of rateable land, specified in the certificate in accordance with subsection (4)(c) , in the locality specified in the certificate.
- (8) A certificate for a locality ceases to authorise the council to which it is issued to make an averaged area rate that is to apply to a category of rateable land in a locality if an averaged area rate is not, for any financial year after the certificate is issued, made in respect of the category of rateable land in the locality.

Division 6B - Re-making of rates

109I. Interpretation of Division 6B

(1) In this Division –

previous rate, in relation to a substituted rate, means a rate that is revoked in accordance with section 109K(1)(a) and replaced by the substituted rate;

rate means a general rate, separate rate, construction and service rate, each within the meaning of section 86 , and includes –

- (a) a charge, or an averaged area rate, made under this Part; and
- (b) a variation of a rate or charge under this Part; and
- (c) a minimum amount payable under this Part;

rectification order means a rectification order made under section 109J(3)(a) ;

substituted rate means a rate that is made under this Part, in accordance with section 109K(1)(b) , for the purposes of replacing a previous rate.

(2) In this Division, a reference to the making, or purported making, of a rate includes a reference to the making, or purported making, of a variation of a rate and the setting, or purported setting, of a minimum amount payable under this Part.

109J. Rectification orders

(1) A council may apply in writing to the Minister for a rectification order to be made in respect of a rate made, or purportedly made, by the council under this Part.

(2) The Minister may require a council to provide information so as to enable the Minister to consider an application made by the council under subsection (1) .

(3) The Minister, after receiving from a council an application under subsection (1) in respect of a rate made, or purportedly made, by the council under this Part, may –

- (a) make a rectification order in respect of the rate; or
- (b) by notice in writing to the council, refuse to make a rectification order in respect of the rate.

(4) The Minister may only make a rectification order in respect of a rate made, or purportedly made, under this Part if the Minister is satisfied –

- (a) that an amount, a method, a description, or another factor, that was included in the resolution by which the rate was made was included in the resolution by error; or
- (b) that the rate may be invalid because the rate, or the making of the rate, is not in accordance with one or more provisions of this Act.

(5) The Minister may make a rectification order in respect of a rate made, or purportedly made, under this Part even if legal proceedings have been commenced or determined in relation to the validity of the rate.

(6) A rectification order –

- (a) must identify the rate to which the order relates; and
- (b) must state that the council that made, or purportedly made, the rate is authorised by the Minister to make, within the period specified in the order, another rate for the purposes of replacing that rate; and
- (c) may require the relevant council to give notice, of the kind and in the manner specified in the order, of the making of the order.

109K. Revocation and re-making of rates

(1) If the Minister makes a rectification order in relation to a rate made, or purportedly made, under this Part, the council –

- (a) by simple majority, may revoke the rate; and

(b) may make under the relevant provision of this Part a rate for the purposes of replacing the rate that is revoked.

(2) The council may make a rate in accordance with subsection (1) even though a period, if any, within which such a rate may be made under this Part has expired.

(3) A rate may be made for the purposes of replacing a rate that is revoked even though the rate is not the same type of rate as the rate that has been revoked.

(4) Nothing in this section is to be taken to prevent the making of a rate, in substitution for another rate, before the expiration of a period, if any, within which such a rate may be made under this Part.

109L. Validity of previous rate notices

(1) A rates notice that imposes on a ratepayer a liability to pay an amount in respect of a previous rate is, if a substituted rate is made for the purposes of replacing the previous rate, taken to be, and to always have been, validly issued, whether or not the previous rate was validly made.

(2) Subsection (1) does not apply to a rates notice that is invalid for reasons other than because the making of a rate to which the notice relates was invalid.

109M. Re-calculation to be made of amount of rates

The general manager of a council that has made a substituted rate in respect of a financial year is to calculate, in relation to an area of land that is rateable land to which the substituted rate is to apply, the difference between –

(a) the amount of all rates for the financial year payable by the ratepayer in respect of the area of land, as contained in a rates notice sent to the ratepayer in accordance with section 122 ; and

(b) the amount of all rates, for the financial year, that would have been payable by the ratepayer in respect of the area of land if the rates notice had contained, instead of the amount calculated in accordance with the previous rate, an amount calculated in accordance with the substituted rate.

109N. Supplementary rates notices

(1) The general manager of a council in respect of a municipal area may send, to a ratepayer in respect of rateable land in the municipal area, a supplementary rates notice.

(2) For the purposes of this section, a supplementary rates notice is a notice imposing on a ratepayer a liability to pay an amount specified in the notice.

(3) An amount specified in a supplementary rates notice sent to a ratepayer in relation to an area of land is to be the amount, if any, by which the amount of rates, referred to in section 109M(b) , in relation to the land is greater than the amount of rates, referred to in section 109M(a) , in relation to the land.

(4) A supplementary rates notice is to state, in relation to the amount specified in the notice, the information specified in section 122(1) as required to be stated, in relation to all rates, in a rates notice.

(5) For the purposes of this Part, a supplementary rates notice sent under subsection (1) is to be taken to be a rates notice sent under section 122(1) .

109O. Refund, &c., where substituted rate made

(1) This section applies to a ratepayer in respect of rateable land if there is an overcharged amount in respect of the land.

(2) An overcharged amount in respect of land is the amount by which the amount of rates, referred to in section 109M(b) , in relation to the land is less than the amount of rates, referred to in section 109M(a) , in relation to the land.

(3) If this section applies to a ratepayer in respect of land in a municipal area, the general manager of the council for the municipal area must send to a ratepayer a notice (a "**notice of overcharging**") in respect of the overcharged amount.

(4) A notice of overcharging is to specify the amount of the overcharged amount and why the amount is an overcharged amount.

(5) Despite section 109L, a ratepayer in respect of rateable land to which an overcharged amount relates is not liable to pay the overcharged amount to the council.

(6) The general manager of a council is to refund or give credit for so much of an overcharged amount as a ratepayer has paid to the council.

Division 7 - Record of rates

110. Record of rates

(1) The general manager is to ensure that records (the "**rate records**") are kept in which the following are entered:

- (a) a brief description of each separate piece of land in the municipal area;
- (b) the value of the land and the value on which the general rate, if any, is based;
- (ba) if an averaged area rate applies in relation to the land, that averaged area rate;
- (c) a brief description of land to which only a service rate or service charge applies;
- (d) the name and address of the owner or owners of all land;
- (e) the name and address of the ratepayer;
- (f) if the land is rated on the basis of a particular use of the land, that use;
- (g) any other prescribed information.

(2) The general manager –

- (a) is to keep the rates record in any form that allows for the accurate recording of information and easy access; and
- (b) may make any alteration to the rates record to correct and up-date its entries.

111. Ownership

(1) If the general manager is of the opinion that a person may or may not be the owner of land, the general manager may require that person to make a statutory declaration in respect of his or her interest in that land.

(2) A person must make a statutory declaration when required to do so under subsection (1).

Penalty: Fine not exceeding 20 penalty units.

Division 8 - Farm rating relief

112. Interpretation of Division 8

In this Division –

forestry means the planting or tending of trees in a plantation or forest for commercial forestry purposes;

member of an owner's family means –

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant, surrogate child, adopted child or stepchild of the owner or owner's spouse or partner; or
- (b) the spouse or partner of the owner or of any other person specified in paragraph (a);

principal means of livelihood includes means of livelihood derived from other farm land;

surrogate child, in relation to another person, means a person –

(a) who is a child of the other person by virtue of the operation of section 26(1) of the Surrogacy Act 2012, or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and

(b) who has not ceased to be a child of that other person under that Act or law;

urban farm land means land –

(a) that is used for substantial agricultural, pastoral, forestry, horticultural, viticultural, apicultural, orcharding, dairy farming, poultry farming or horse farming purposes or any 2 or more of those purposes; and

(b) that provides the owner of the land with the principal means of livelihood; and

(c) the value of which is increased because of –

(i) its proximity to land being used or developed for residential, industrial or commercial uses; or

(ii) a substantial demand for the land as rural residential land.

113. Declaration of land as urban farm land

(1) An owner of farm land may apply to a council to declare that land urban farm land.

(2) An application is –

(a) to be in writing in a form approved by the council; and

(b) to contain such information as the council requires.

(3) Within 60 days of receipt of the application, a council may –

(a) grant the application and declare the land to be urban farm land; or

(b) refuse to grant the application.

(4) The council is to notify its decision in writing –

(a) to the owner of the land; and

(b) to the Valuer-General, if it makes a declaration.

(5) If the council refuses to grant the application, the owner may apply to the Magistrates Court (Administrative Appeals Division) for a review of the refusal.

(6)

114. Revocation of declaration

(1) A council may revoke a declaration in respect of land –

(a) on the sale or conveyance of the land; or

(b)

(c) if the land is no longer farm land or urban farm land.

(2) A revocation is to be –

(a) in writing; and

(b) sent to the owner of the land.

(3) The owner may apply to the Magistrates Court (Administrative Appeals Division) for a review of the revocation of a declaration.

(4)

115. Revaluation of land

(1) On receipt of a declaration from a council, the Valuer-General is to make a valuation of the land as urban farm land.

(2) The valuation is to –

- (a) be made under section 51 of the Valuation of Land Act 2001 of the assessed annual value, land value and capital value of the land; and
- (b) be made on the basis that the land is not to be used otherwise than farm land; and
- (c) take effect from the date of the council's declaration; and
- (d) take into account –
 - (i) the farm land valuations generally prevailing in the municipal area; and
 - (ii) the location of the land.

116. Sale or conveyance of urban farm land

(1) If any part of the land declared to be urban farm land is sold or conveyed, except by way of gift or bequest to a member of the owner's family, the owner is to pay the difference or a proportion of the difference between the rates and charges that would have been payable over the previous 5 years in respect of that part if the land had not been declared urban farm land.

(2) The Valuer-General is to revalue any urban farm land remaining after part of the land is sold or conveyed.

Division 9 - Liability and payment of rates

117.

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118. Notification of making rates

The general manager, within 21 days after the council makes any rates and charges, is to –

- (a) notify that making together with a summary of the rates and charges made in a daily newspaper circulating in the municipal area; and
- (b) provide the Director with a copy of the resolution relating to that making.

119. Charge on land

Rates are a charge on the land in respect of which they are payable and –

- (a) are enforceable in priority to any mortgage, charge, lien and encumbrance; and
- (b) rank equally to any other debt to a statutory authority which is a charge on the land.

120. Liability for rates

(1) Subject to subsections (1A) and (2A) , an owner of land, including the Crown, is a ratepayer and is liable for the payment of rates in relation to that land.

(1A) Despite subsection (1) , but subject to subsection (2C) , the holder of a relevant right to occupation in relation to land to which a subparagraph of section 87(1)(b) relates is a ratepayer and is liable for the payment of rates in relation to that land.

(2) An occupier of land may enter into a written agreement with the owner to be the ratepayer in respect of that land for specified rates.

(2A) If an occupier of land enters into an agreement under subsection (2) to be the ratepayer in respect of that land for specified rates, the occupier is a ratepayer in relation to those rates and is liable for the payment of those rates.

(2B) The Crown may enter into a written agreement with the holder of a relevant right to occupation, in relation to land to which a subparagraph of section 87(1)(b) relates, for the Crown to be the ratepayer in respect of that land for specified rates.

(2C) If the Crown enters into an agreement under subsection (2B) for the Crown to be the ratepayer in respect of land for specified rates, then, despite subsection (1A), the Crown is a ratepayer in relation to those rates and is liable for the payment of those rates.

(3) An occupier who enters into an agreement under subsection (2) to be the ratepayer in respect of land is to notify the general manager accordingly.

(3A) In the case of land owned by the Crown, the Crown is to notify the general manager that the occupier of that land, or the holder of a relevant right to occupation, has entered into an agreement under subsection (2) or that the Crown has entered into an agreement under subsection (2B), as the case may be.

(4) The liability for the payment of rates starts on the date specified in the rates notice as the date by which the rates are due to be paid.

(5) The date by which rates specified in a rates notice are due to be paid must not be within—

(a) 60 days of the date of issue of the rates notice if the rates are to be paid in one payment; or

(b) 30 days of the date of issue of the rates notice if the rates are to be paid in instalments.

(6)

121. Change in ownership or occupancy of land

(1) The purchaser of land or any other person to whom land is transferred must give notice in writing to the Recorder of Titles within 3 months of the purchase or transfer of the following details:

(a) the fact of the purchase or transfer;

(b) the address or location of the land;

(c) the name and address of the new owner of the land.

Penalty: Fine not exceeding 10 penalty units.

(1A) If land is compulsorily acquired under or for the purpose of any Act, the authority acquiring the land must give notice of that acquisition in writing to the Recorder of Titles within 3 months of the acquisition.

(2) The owner of land in respect of which an occupier is the ratepayer must give written notice to the Recorder of Titles of a change of occupancy.

(2A) Where the change of occupancy arises from a transaction in respect of which it is not intended to lodge a dealing with the Recorder of Titles, the notice is to be given within 30 days of the change of occupancy.

(2B) A notice under this section –

(a) is to contain such particulars relating to the description of the land, the parties to the transaction and details of the transaction as are required for the purposes of this Act and any other Act prescribed by the regulations; and

(b) is to be included in any dealing lodged with the Recorder of Titles relating to the purchase, disposition or acquisition as may be required by the Land Titles Act 1980 .

(2C) Without limiting the preceding provisions of this section, where a person has been aggrieved by a failure to comply with subsection (1), (1A), (2) or (2A), the Recorder of Titles must accept for the purposes of this Act a copy of the notice of the transaction or acquisition produced by that person containing all the particulars required to be included in the notice as evidence that the transaction for which the notice is required has been completed.

(2D) An owner who is required to give notice under this section must at the request of a person disposing of any land for which the notice is required provide that person with a copy of the notice required under

subsection (1), (1A), (2) or (2A) .

(2E) Where –

(a) a person by whom the relevant land was sold or otherwise disposed of or whose land was compulsorily acquired has been aggrieved by a failure to comply with subsection (1), (1A), (2) or (2A) ; and

(b) the Recorder of Titles has received from that person a copy of the notice required under subsection (1), (1A), (2) or (2A) –

the parties to the relevant transaction are to be treated for the purposes of this Act as if the notice had been duly given to the Recorder of Titles.

(3) A person who fails to comply with this section is taken to be the ratepayer in respect of that land.

122. Rates notice

(1) The general manager is to send to each ratepayer a notice relating to all rates stating the following:

(a) the land in respect of which the rates are payable;

(b) the rates payable by that ratepayer;

(c) the basis on which the rates payable are calculated;

(d) any factor by which the rates are varied;

(e) the period for which the rates are payable;

(f) the date by which the rates are due to be paid;

(g) the place or places where the rates may be paid;

(h) the date on which the notice is issued;

(i) whether the rates may be paid in one sum or by instalments;

(j) the date or dates on which instalments are to be paid;

(k) any rebate payable for early payment;

(l) if interest is payable on unpaid rates, the rate at which it is payable;

(m) if a penalty is payable if rates are not paid by the due date, the percentage rate applicable to such a penalty;

(n) if a minimum amount is payable, that minimum amount.

(2) The general manager may include the information required under subsection (1)(c) and (d) in a document attached to the rates notice if –

(a) the general manager determines that it is impracticable to include it in the rates notice; and

(b) the rates notice states that fact.

123. Objections to rates notice

(1) A person may object to a rates notice on the ground that –

(a) the land specified in the rates notice is exempt from the payment of those rates; or

(b) the amount of those rates is not correctly calculated having regard to the relevant factors; or

(c) the basis on which those rates are calculated does not apply; or

(d) he or she is not liable for the payment of the rates specified in the rates notice; or

(e) he or she is not liable to pay those rates for the period specified in the rates notice.

(2) An objection is to be –

- (a) made in writing within 28 days after receipt of the rates notice; and
 - (b) lodged with the general manager.
- (3) The general manager may –
- (a) amend the rates notice as the general manager considers appropriate; or
 - (b) refuse to amend the rates notice.
- (4) A person may appeal to the Magistrates Court (Administrative Appeals Division) for a review if the general manager –
- (a) fails to amend the rates notice within 30 days after lodging the objection; or
 - (b) refuses to amend the rates notice.
- (5)

123A.

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124. Instalment payments

- (1) A council may permit a ratepayer to pay rates by instalments instead of by one payment.
- (2) A council may decide that any rates are payable by all ratepayers by instalments.
- (3) A council may decide that rates are not payable by instalments by some ratepayers if the total amount of rates payable is equal to, or less than, the prescribed amount.
- (4) The council is to determine the dates by which instalments are to be paid.
- (5) If a ratepayer fails to pay any instalment within 21 days of the date on which the rates are due, the council may require the ratepayer to pay the full amount owing for the financial year.

125. Postponement of payment

- (1) A ratepayer may apply to the council for a postponement of payment of rates on the ground of hardship.
- (2) An application is to be –
 - (a) made in writing; and
 - (b) lodged with the general manager.

126. Conditions of postponement

- (1) A council may grant a postponement of the payment of rates for a specified period if satisfied that such payment would cause hardship.
- (2) A council may grant a postponement of payment of rates –
 - (a) on the condition that the ratepayer pay interest on the amount of rates postponed at a rate fixed by the council; and
 - (b) on any other condition the council determines.
- (3) Interest fixed under subsection (2) (a) is not to exceed the prescribed percentage as calculated in section 128 (2) .

127. Postponement ceases to operate

- (1) A council may, at any time, revoke a postponement of payment of rates by giving 60 days notice in writing to the ratepayer of the date on which the postponement ceases to operate.
- (2) A postponement of payment of rates ceases to operate on the date on which the ratepayer ceases to own or occupy the land in respect of which those rates are payable.

128. Late payments

- (1) If any rates or instalments are not paid on or before the date they fall due, a council may –
 - (a) impose a penalty not exceeding 10% of the unpaid rate or instalment; or
 - (b) charge a daily interest not exceeding the prescribed percentage in respect of the unpaid rate or instalment for the period during which it is unpaid; or
 - (c) impose a penalty and charge interest as specified in paragraphs (a) and (b) .
- (2) For the purposes of subsection (1) , *prescribed percentage* is to be calculated in accordance with the following formula:

$$P = \frac{LTB + 6\%}{365}$$

where –

P is the prescribed percentage;

LTB is the official ten-year long term bond rate as determined by the Reserve Bank as at the close of business on the last day of business preceding 1 March.

129. Remission of rates

- (1) A ratepayer may apply to the council for remission of all or part of any rates paid or payable by the ratepayer or any penalty imposed or interest charged under section 128 .
- (2) An application is to be –
 - (a) made in writing; and
 - (b) lodged with the general manager.
- (3) A council, by absolute majority, may grant a remission of all or part of any rates, penalty or interest paid or payable by the ratepayer.
- (4) A council, by absolute majority, may grant a remission of any rates, penalty or interest paid or payable by a class of ratepayers.
- (5) The general manager is to keep a record of the details of any remission granted under this section.

130. Discount for early payment

- (1) A council may offer to all ratepayers a discount not exceeding 10% on any rate specified in a rates notice for payment of that rate before the date specified in the rates notice.
- (2) Subsection (1) only applies in respect of rates which are not paid in instalments.

131. Application of money

Any amount received or recovered by a council in respect of rates is to be applied as follows:

- (a) firstly – in payment of any costs awarded to, or recoverable by, the council in any court proceedings undertaken by the council for the recovery of the rates;
- (b) secondly – in discharging any liability for interest;
- (c) thirdly – in payment of any penalty;
- (d) fourthly – in discharging liabilities for rates in the order in which those liabilities arose.

132. Certificate of liabilities

- (1) A person referred to in subsection (2) may apply to the general manager for a certificate stating–
 - (a) the amount of any liability for rates, whether due or not on the land and outstanding interest or penalty payable in relation to the land;

- (b) any amount received on account of rates that is held in credit against future liabilities for rates in relation to the land; and
 - (c) the amount of any charge on the land recoverable by the council.
- (2) The following persons may apply for a certificate under subsection (1) :
- (a) the owner of a registered estate or interest in the land;
 - (b) an occupier of the land;
 - (c) a person who has entered or proposes to enter into a contract to purchase the land;
 - (d) a mortgagee or prospective mortgagee of the land;
 - (e) a person authorized to act on behalf of any person referred to in paragraph (a) , (b) , (c) or (d) .
- (3) An application is to –
- (a) be in writing; and
 - (b) identify the land to which the application relates; and
 - (c) state the nature of the applicant's interest in the land; and
 - (d) be lodged with the general manager.
 - (e)
- (4) On receipt of an application, the general manager is to issue a certificate containing the details referred to in subsection (1) .
- (5) On the issue of a certificate in relation to land, the council may not claim that a liability, other than a liability disclosed in the certificate, exists in relation to the land at the date of the certificate.
- (6) A council incurs no liability for a certificate issued under this section.
- (7) A prescribed fee is payable in respect of the issue of a certificate.

Division 10 - Recovery

133. Recovery of rates

- (1) A council may recover in a court of competent jurisdiction as a debt due to it –
- (a) any outstanding unpaid rates; and
 - (b)
 - (c) any additional amount payable as a result of an objection under this Part.
- (2) A council must give the ratepayer notice in writing of its intention to recover any debt under this section.
- (2A) An action for recovery of any debts may include debts relating to any land owned in the municipal area by the ratepayer.
- (3) An action for recovery of any debts must not be instituted until at least 14 days after the date of a notice referred to in subsection (2) .
- (4) The right of a council to recover rates is not affected by any objection or review under this Act.

134. Recovery from certain persons

A council may recover rates from any of the following persons:

- (a) the ratepayer or owner of the land;
- (b) the occupier of the land, with his or her agreement;
- (c) the ratepayer or owner of the land at the time the rates were made.

135. Rents under leases, &c., for unpaid rates

A council, by notice in writing, may require a person who holds a lease or licence relating to land in respect of which rates are due to pay to the council any rent or other consideration payable under the lease or licence in satisfaction of any unpaid rates.

136. Indemnity

(1) If rates are paid by a person who is a lessee or licensee, or recovered from a person who is not the ratepayer liable to pay those rates, that person may –

- (a) recover the amount so paid as a debt from the ratepayer who is liable to pay; or
- (b) set off the amount so paid against a liability to a person under a lease or licence.

(2) A person against whom an amount is set off under subsection (1) (b) may set off the amount against another person from whom the interest in the land is derived.

(3)

Division 11 - Sale of land

137. Sale of land for unpaid rates

(1) If any rates in respect of land that is not Crown land have been outstanding for 3 years or more, the council may –

- (a) sell that land or part of that land as if it were the owner of the land –
 - (i) by public auction; or
 - (ii) if the proceeds of the sale are unlikely to meet the costs of the public auction, by direct sale; or
- (b) apply to the Minister for an order that the land be transferred to the council if it is not possible after reasonable inquiry to identify the owner of the land or the whereabouts of the owner.

(1A) The Minister may require a council to provide any information the Minister considers necessary to support an application under subsection (1) .

(1B) The provisions of section 140(3) and (4) apply to an order under subsection (1) as if it were an order under that section.

(2) For the purposes of selling land, the council may –

- (a) subdivide, change the use of or otherwise develop the land; and
- (b) carry out any work on the land; and
- (ba) require any occupier of the land who is not the owner of the land to vacate the land; and
- (bb) do anything a mortgagee can do under the Land Titles Act 1980 in the case of default of payment of money owing under a mortgage; and
- (c) grant any easements or enter into covenants in respect of the land.

(3) Before a council sells land or takes any action under subsection (2) , the general manager must serve a notice in writing on the ratepayer stating–

- (a) the period for which the rates have been in arrears; and
- (b) the amount of the total rates outstanding in relation to the land; and
- (c) that if that amount is not paid in full within 90 days the council intends to sell the land for non-payment of rates.

(4) The general manager is to send a copy of the notice to–

- (a) any owner of the land who is not the ratepayer; and
 - (b) any registered mortgagee of the land; and
 - (c) any other person who has a registered interest in the land.
- (5) The general manager is to cause the details of the notice as specified in subsection (5A) to be advertised on at least 2 occasions in a daily newspaper circulating in the municipal area.
- (5A) A notice referred to in subsection (5) is to specify –
- (a) the land or lands to which the notice relates; and
 - (b) the owner or owners of the land or lands; and
 - (c) the matters referred to in subsection (3) .
- (6) The general manager may effect service of the notice by leaving it in a conspicuous place on the land if the general manager–
- (a) having made reasonable enquiries cannot ascertain the name or address of the person on whom the notice is to be served; or
 - (b) considers it unlikely that the notice would otherwise come to the attention of the person on whom it is to be served.
- (7) If the outstanding amount –
- (a) is not paid within 90 days, a council may sell the land in accordance with this Division; or
 - (b) is paid within 90 days, the general manager must cancel the auction.
- (7A) If the ratepayer pays the outstanding amount within 90 days, the council may recover any costs incurred by it under this Division in relation to the matter as a debt owed to it under this Part.
- (8) If the land fails to be sold, the council may take steps under section 140 in relation to the land.

138. Title vests in purchaser

- (1) If land is sold under this Division, the registration of a memorandum of transfer or the execution of the indenture of conveyance vests the title to the land in the purchaser.
- (2) The title vested in a purchaser is freed of –
- (a) all mortgages and charges; and
 - (ab) any caveat that if not removed would forbid the registration of the memorandum of transfer or execution of the indenture of conveyance; and
 - (ac) any other encumbrances or interests; and
 - (b) all leases and licences.
- (3) A memorandum of transfer or indenture of conveyance by a council is evidence that the requirements of the Division in relation to the sale of the land have been complied with.

139. Application of money from sale

- (1) Any money received on the sale of land is to be applied as follows:
- (a) firstly – in paying the costs of the sale and any other costs incurred in proceeding under this Division;
 - (b) secondly – in discharging any liabilities to the council and the Crown in respect of the land, the money, if it is insufficient to discharge the liabilities in full, being applied between the council and the Crown in the same proportions as the respective liabilities bear to the total amount of the liabilities combined;
 - (c) thirdly – in discharging any liabilities secured by registered mortgages, encumbrances or charges;

(d) fourthly – in discharging any other mortgages, encumbrances and charges of which the council has notice;

(e) fifthly– in payment to the previous owner of the land if that person becomes known within 3 years of the sale.

(2) This section prevails over section 10(3) of the Land Tax Act 2000 .

139A. Register of money

(1) The general manager is to keep a register of any money remaining after payments and discharges are made under section 139 .

(2) The register is to include details of the previous owner of the land.

(3) The general manager is to cause prescribed details of the register in respect of prescribed amounts to be published at least once a year in a daily newspaper circulating in the municipal area.

(4) Any money received by a council from the sale of land that is not claimed by the owner of the land within 3 years of the sale vests in the council.

140. Procedure if council cannot sell land

(1) If, after a council has made reasonable attempts to sell land, it appears that there are no reasonable prospects of selling the land within a reasonable time, the council may apply to the Minister for an order under this section.

(2) On the receipt of an application by a council, the Minister, after consultation with the council and being satisfied that it is appropriate to do so, may by notice in writing order that the land be transferred to the council.

(3) An order made under subsection (2) operates as a memorandum of transfer.

(4) If an order is made under this section –

(a) the land to which the order relates is freed of any charge against the land that exists in favour of the council; and

(b) any outstanding liability to the council in respect of the land is discharged.

PART 9A -

Division 1 -

140A.

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140B.

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Division 2 -

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Division 3 -

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PART 10 -

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144.

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PART 11 - By-laws

Division 1 - General provisions

145. General power to make by-laws

- (1) A council may make by-laws in respect of any act, matter or thing for which a council has a function or power under this or any other Act.
- (2) By-laws under this Part may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the by-laws.

146. Applicability of by-laws

By-laws may –

- (a) be made to apply to the whole, or separately to a part or parts of, a municipal area; and
- (b) make provision for matters or things to be referred to in general terms.

147. Incorporation by reference

- (1) A by-law may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body –
 - (a) either wholly or partially; or
 - (b) with or without modifications; or
 - (c) either specifically or by reference.
- (2) If, after the application, adoption or incorporation, the document, code, standard, rule, specification or method is amended or rescinded or replaced, the by-law remains unaltered and its reference is not up-dated except by an amending by-law.
- (3) In any proceedings in relation to any by-law, any printed or mechanically or electronically copied book, booklet, pamphlet, sheet or card purporting to contain the code, standard, rule, specification or method referred to is presumed to be issued by the specified body or association.

148. Penalties and recovery of expenses

- (1) By-laws may –
 - (a) provide that a contravention of, or a failure to comply with, any of the by-laws is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.
- (2) By-laws may provide that, in addition to a penalty imposed in relation to a failure to comply with or a contravention of the by-laws, an expense incurred by a council in consequence of that failure or contravention is recoverable by the council as a debt payable by the person so failing to comply or contravening.

149. Infringement notices and fines

- (1) By-laws may provide that a council –
 - (a) may issue infringement notices in respect of offences specified in the by-laws; and
 - (b) may issue one infringement notice in respect of more than one offence; and
 - (c) may impose a monetary penalty for an offence in respect of which an infringement notice is issued.
- (2) A monetary penalty is a penalty payable to the council as an alternative to prosecution and any penalty that may be imposed as a result of the prosecution.

- (3) By-laws which provide for the issue of an infringement notice and the monetary penalty are to specify–
 - (a) the amount of the monetary penalty; and
 - (b) the person who may issue a notice of infringement; and
 - (c) the person to whom payment of the monetary penalty may be made; and
 - (d) the period within which the monetary penalty is to be paid in order to avoid the infringement notice being referred to the Director, MPES.
- (4) An infringement notice is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 .

150. Restrictions on making of by-laws

- (1) A council must not make a by-law which –
 - (a) applies retrospectively; or
 - (b) shifts the burden of proof unless any Act specifically provides for this; or
 - (c)
 - (d) is contrary to law or is in conflict with any planning scheme in the municipal area; or
 - (da) restricts competition or has a significant impact on business unless the outcome is justified in the public interest; or
 - (e) exempts a person from prosecution for nuisance at common law; or
 - (f) exempts the council from any liability; or
 - (g) permits a rate, charge, fee or fine to be determined, altered or substituted otherwise than by amendment to the by-law.
- (2) Any provision of a by-law which contravenes this section is invalid.

151. Adoption of by-laws

- (1) If a new council is created or a council is created as the result of 2 or more municipal areas or parts of municipal areas being combined, the council so created may resolve by an absolute majority to adopt any by-law previously in force in any of those areas or parts of those areas.
- (2) The resolution adopting a by-law may –
 - (a) provide for the repeal of any other by-law dealing with a matter provided for by the adopted by-law; or
 - (b) make minor changes to the adopted by-law that are necessary to reflect the newly created municipal area.
- (3) Notification of a resolution under subsection (2) is to be published in the *Gazette*.
- (4) On publication of the resolution in the *Gazette*, the adopted by-law has the same effect as if it had been made by the new council or combined councils.
- (5) A by-law which is not adopted by a council under subsection (1) within a period of 14 days after that council is created ceases to have effect from the end of that period.

152. Enforcement

- (1) By-laws may authorize employees of a council –
 - (a) to remove any person from land owned by, or under the control of the council whom they reasonably believe is offending against a by-law; and
 - (b) to remove anything which is on such land without the approval of the council.
- (2) By-laws may authorize a police officer –

- (a) to carry out any action under subsection (1) ; and
- (b) to arrest a person who is on land owned by, or under the control of, the council and whom the police officer reasonably believes is offending against a by-law.

152A. Requirement to give name and address

An employee of, or a person authorised by, a council may require a person to give his or her name and address if the employee or authorised person reasonably believes that the person is offending or has offended against a by-law.

153. Publication of by-laws

- (1) A council must cause a by-law made or adopted by it to be published in the *Gazette*.
- (2) A by-law, made by a council, that is not published in the *Gazette* is of no effect.

154. Repeal and amendment of by-laws

- (1) A by-law (other than a by-law adopted by a council under section 172) may be repealed or amended–
 - (a) by another by-law; or
 - (b) on the recommendation of the Minister, by an order of the Governor.
- (2)
- (3) If a by-law, or a part of a by-law, that is made by a council is disallowed under section 47 of the Acts Interpretation Act 1931 , the Minister, by notice in the *Gazette*, is to notify–
 - (a) the fact of the disallowance; and
 - (b) the date of the disallowance.

155. Expiry of by-laws

A by-law made, or adopted, by a council, whether later amended or not, expires 10 years after the date on which it takes effect unless it is expressed to expire sooner.

Division 2 - Procedural provisions

156. Motion of intention to make by-law

- (1) A council which intends to make a by-law is to pass a resolution by an absolute majority to that effect.
- (2) A by-law which is made without the resolution referred to in subsection (1) is invalid.

156A. Regulatory impact statement

- (1) A council is to prepare a regulatory impact statement in respect of any by-law it intends to make.
 - (1A) Subsection (1) does not apply to any by-law –
 - (a) the whole purpose of which is to repeal another by-law; or
 - (b) that is an amendment to an existing by-law that –
 - (i) is of a minor and technical nature; or
 - (ii) does not significantly alter the purpose or effect of the existing by-law; or
 - (iii) does not significantly alter the impact on the public of the existing by-law.
 - (2) A regulatory impact statement is to include the following:
 - (a) the objectives of the by-law and the means by which the by-law is intended to achieve them;
 - (b) the nature of any restriction on competition;
 - (c) an assessment of the costs and benefits of –

- (i) any restriction on competition; or
- (ii) any impact on the conduct of business;
- (d) any alternative option considered by the council;
- (e) an assessment of the greatest net benefit or least net cost to the community;
- (f) an assessment of the direct and indirect economic, social and environmental impact of the by-law;
- (g) details of the proposed public consultation process.

(3) If a council assesses that a proposed by-law is unlikely to impact on business or restrict competition, it is to state in the regulatory impact statement the reasons for that assessment.

(4) If a council assesses that a proposed by-law is likely to impact on business or restrict competition, it is to state in the regulatory impact statement whether or not the benefits of the impact or restriction outweigh the costs.

(5) A council is to submit the regulatory impact statement to the Director.

(5A) A council may only submit to the Director a regulatory impact statement in relation to a proposed by-law if a motion of intention to make the proposed by-law has been passed by the council under section 156(1) .

(6) On receipt of the regulatory impact statement, if satisfied as to the statement, the Director is to issue to the council a certificate –

- (a) certifying that the statement is satisfactory; and
- (b) stating that the council may commence the public consultation process.

157. Notice of proposed by-law

(1) On receipt of a certificate issued under section 156A(6) , the general manager is to give notice in accordance with this section.

(1A) The notice must state the prescribed matters.

(2) The notice must be –

- (a) published at least once in a daily newspaper circulating in the municipal area; and
- (ab) made available for viewing at a website of the council from the day when the notice is first published in the newspaper until the end of the day specified in the notice as the earliest day by which the notice may be removed from the website; and
- (b) displayed in a conspicuous place in the public office of the council from the day when the notice is first published in the newspaper until the end of the day specified in the notice.

(3)

(4) The day specified in the notice must be no earlier than 21 days after publication of the notice in the newspaper.

(5) If a notice is published more than once in a newspaper, a reference to publication of the notice is a reference to its first such publication.

(6) The price of a copy of a proposed by-law and a copy of the regulatory impact statement must not exceed the approximate cost to the council of having the copy available for purchase and, if the copy is supplied to a purchaser by post, the cost of the postage.

158. Proposed by-laws open to inspection and may be purchased

The general manager must make available –

- (a) a copy of a by-law the council proposes to make and the regulatory impact statement prepared under section 156A for inspection by the public until the date specified in the notice referred to in section 157 ; and

(ab) a copy of a by-law the council proposes to make, and a copy of the regulatory impact statement, for viewing at a website of the council as soon as practicable after publication of the notice referred to in section 157 until the day specified in the notice; and

(b) copies of a by-law the council proposes to make and the regulatory impact statement for purchase at the public office as soon as practicable after publication of the notice until the date specified in the notice referred to in section 157 .

159. Submissions in respect of proposed by-law

- (1) Any person may make a submission in respect of the making of a by-law a council proposes to make.
- (2) A council must consider every submission properly made to it.

160. Alterations to proposed by-law

If a council decides to alter a by-law it proposes to make—

- (a) it may do so by absolute majority; and
- (b) does not need to give public notice unless the alteration substantially changes the purpose, or the effect on the public, of the proposed by-law.

161. Making by-laws

A council may only make a by-law under its common seal.

162. Certification of by-law

- (1) A by-law made by a council is to be certified by –
 - (a) a legal practitioner that its provisions are in accordance with the law; and
 - (b) the general manager of the council that it is made in accordance with this Act.
- (2) A by-law that is not certified in accordance with subsection (1) is of no effect.

163. Commencement of by-law

A by-law that is made or adopted by a council commences –

- (a) on the day on which it is published in the *Gazette*; or
- (b) on a later day specified in the by-law.

164. By-law to Director

A council that makes a by-law is to forward to the Director –

- (a) a sealed copy of the by-law; and
- (b) the certification under section 162 ; and
- (c) a statement explaining –
 - (i) the purpose and effect of the by-law; and
 - (ii) the outcomes of public consultations in respect of the by-law.

165. Title and numbering of by-laws

A by-law that is made or adopted by a council is to—

- (a) have in its title a reference—
 - (i) to the municipal area to which it relates; and
 - (ii) to the subject matter of the by-law; and
 - (iii) to the year in which it is made or adopted; and

(b) be numbered so that no other by-law relating to that municipal area and subject matter has the same number in that year.

166. Copies of by-laws

- (1) The general manager is to keep a sealed copy of every by-law in force and make available copies for inspection or purchase by the public and for viewing at a website of the council.
- (2) The purchase price is to be no greater than the approximate cost to the council of providing the document.

167. Notice of by-laws

- (1) A council is to place at appropriate locations notices advising of any by-law affecting the conduct of the public.
- (2) A notice is to include –
 - (a) the purpose and effect of the relevant by-law; and
 - (b) the penalty for a contravention of, or failure to comply with, the by-law.
- (3) A person cannot use as a defence the failure of a council to comply with these provisions.

Division 3 - By-laws in respect of certain matters

168. Fees and licences

A council may make by-laws prescribing –

- (a) fees, charges and rents in relation to a service, works, undertaking, property, matter or thing; and
- (b) the purposes for which, and the conditions on which –
 - (i) permits, licences, authorities and registrations may be granted by the council; and
 - (ii) a service, product, commodity or information may be given by the council; and
- (c) the manner in which applications may be made for permits, licences, authorities and registrations; and
- (d) the fee payable for the permits, licences, authorities and registrations and for their renewal.

169. Execution of works

- (1) By-laws may –
 - (a) require work to be executed or a thing to be done by a person to whom the by-laws apply in or of such materials, within the periods and in the manner the council or an employee or agent of the council directs; and
 - (b) require work to be executed only by a person with the appropriate qualifications; and
 - (c) provide that the council may carry out work required by this or any other Act to be carried out by another person if that person defaults.
- (2) The power to direct the manner of execution of work includes the power to require the person carrying out the work to pay to the council, or enter into a bond for payment to the council of, an amount it thinks fit to provide security against costs which it may incur as a result of the execution of the work.

170. Parking of vehicles

- (1) A council may make by-laws in respect of the parking of vehicles on land owned by it or under its control.
- (2) In respect of by-laws which create an offence concerning a vehicle, the following provisions apply:
 - (a) the registered operator is taken to have committed the offence unless he or she was not in control of the vehicle at the time the offence was committed and –

(i) not later than 14 days after being served with a notice of infringement furnishes the general manager with a statutory declaration which, in the general manager's opinion, proves the facts specified in subsection (3) ; or

(ii) establishes those facts to the satisfaction of the court;

(b) a notice of infringement may be addressed to –

(i) the registered operator; or

(ii) a person apparently in charge of the vehicle by the person's name; or

(iii) if the name is not known when the notice of infringement is being made out – by the person's designation as the registered operator of the vehicle or person apparently in charge of it, identifying the vehicle by the number plate affixed to it, or, where there is no number plate, by other sufficient description;

(c) evidence that –

(i) the name and address of a person were shown painted on or affixed to the outside of a vehicle; or

(ii) the name and address of a person purporting to be the name and address of the registered operator of a vehicle were shown in any manner in or on that vehicle –

is evidence that the person whose name and address were shown was at the time they were shown the registered operator of that vehicle.

(3) The facts to be specified in a statutory declaration are as follows:

(a) that some other person was in control of the vehicle at the time when the offence was committed and that the name and address of residence of that other person are as set out in the statutory declaration;

(b) that the vehicle was sold before the offence was committed on the date specified in the statutory declaration to a person whose name and address are as set out in the statutory declaration;

(c) if the sale was made through an agent, that the name and address of the agent are as set out in the statutory declaration;

(d) that at the time when the offence was committed he or she was unable to exercise any control over the vehicle because it had been stolen or was being used unlawfully without consent.

(4) In this section,

registered operator –

(a) in relation to a motor vehicle or trailer, has the same meaning as in the Vehicle and Traffic Act 1999 ; and

(b) in relation to a bicycle, means the owner of the bicycle.

Division 4 - Model by-laws

170A. Regulatory impact statement in respect of model by-law

(1) The Minister is to ensure that a regulatory impact statement is prepared in respect of any model by-law (including a model by-law that amends another model by-law) he or she intends to make under section 171(1) .

(2) Subsection (1) does not apply to any model by-law that is an amendment, to an existing model by-law, that –

(a) is of a minor and technical nature; or

(b) does not significantly alter the purpose or effect of the existing model by-law; or

(c) does not significantly alter the impact on the public of the existing model by-law, as adopted by a council.

- (3) A regulatory impact statement in relation to a model by-law is to include the following:
- (a) the objectives of the model by-law and the means by which the model by-law is intended to achieve them;
 - (b) the nature of any restriction on competition;
 - (c) an assessment of the costs and benefits of –
 - (i) any restriction on competition; or
 - (ii) any impact on the conduct of business;
 - (d) an identification of the alternative options by which the objectives can be achieved (whether wholly or substantially);
 - (e) an assessment of the greatest net benefit or least net cost to the community;
 - (f) an assessment of the direct and indirect economic, social and environmental impact of the model by-law;
 - (g) details of the proposed public consultation process, if any.
- (4) The regulatory impact statement is to state whether the model by-law is likely to have an impact on business or restrict competition and, if it is, the reason why.

170B. Consultation in respect of model by-laws

The Minister may, if he or she thinks fit, arrange for public consultation to be conducted in respect of –

- (a) a regulatory impact statement; or
- (b) a proposed model by-law; or
- (c) a proposal to amend a model by-law under section 171 .

171. Making of model by-laws

- (1) The Minister may make or amend model by-laws (including model by-laws that amend other model by-laws) dealing with any or all of the subjects on which any council has power to make by-laws.
- (2) A model by-law made under subsection (1) is to be –
- (a) published in the *Gazette* together with a copy of the regulatory impact statement prepared under section 170A , if such a statement is required under that section to be prepared in relation to the model by-law; and
 - (b) laid before both Houses of Parliament together with the regulatory impact statement, if any, within 10 sitting days after publication.
- (3) Either House of Parliament may pass a resolution disallowing a model by-law within 15 sitting days after the by-law has been laid before it.
- (4) A by-law which has been disallowed under subsection (3) may not be adopted by any council.
- (5) The Minister, by notice in the *Gazette*, is to notify –
- (a) that a model by-law has not been disallowed; or
 - (b) that a model by-law has been disallowed.

172. Council may adopt model by-laws

- (1) A council, by an absolute majority, may resolve to adopt any model by-law which has not been disallowed under section 171 .
- (2) The council must adopt the whole of the model by-law.
- (3) The resolution adopting the model by-law may provide for the repeal of any other by-law dealing with any of the matters provided for by the model by-law.

(4) The council must cause a notice to be published in the *Gazette* that a model by-law has been adopted by the council.

(5) A model by-law that is adopted by a council has, on and from the date on which notice is given under subsection (4) in relation to the model by-law, effect, according to the terms of the model by-law, as if it were a by-law made by the council, except that sections 162 and 164 do not apply in relation to it.

(5A) If a model by-law (the ***amending model by-law***) amends another model by-law that has been adopted by a council, the amending model by-law –

(a) is, on and from the date on which notice is given under section 171(5) that the amending model by-law has not been disallowed, to be taken to be a model by-law adopted by the council; and

(b) despite section 163, commences on the day on which it is published in accordance with section 153.

(5B) A council that adopts, or is to be taken under subsection (5A) to have adopted, a model by-law is to affix its common seal to 2 copies of the model by-law and is to forward one of them to the Director.

(6) A council, by an absolute majority, may resolve to repeal any model by-laws adopted by the council.

(7) The repeal of a model by-law is to be notified in the *Gazette*.

173. Model by-law may allow additions

(1) A model by-law may allow blank spaces in which words may be inserted by a council which do not alter the intent of the by-law but indicate names and matters pertinent to the particular municipal area.

(2) The addition of these details does not amount to an amendment of the by-law.

174. Repeal of model by-law

(1) The Minister may, by notification in the *Gazette*, repeal a model by-law.

(1A) A notification under subsection (1) may specify that the repeal to which the notice relates is a self-executing repeal.

(2) The repeal of a model by-law adopted by a council does not affect its operation as adopted, unless the repeal is a self-executing repeal.

(3) If a notification of the repeal of a model by-law under subsection (1) specifies that the repeal is a self-executing repeal, a model by-law, adopted by a council, that consists of the repealed model by-law (as amended, if at all, under this Part), is repealed on and from the date of the notification.

PART 12 - Special Powers

Division 1 - Purchase, acquisition, sale and lease of property

175. Purchase or lease of land

A council may purchase or lease land for any purpose which it considers to be of benefit to the council or the community.

176. Acquisition of land

A council may acquire land for prescribed purposes in accordance with the Land Acquisition Act 1993 .

177. Sale and disposal of land

(1) A council may sell, lease, donate, exchange or otherwise dispose of land owned by it, other than public land, in accordance with this section.

(2) Before a council sells, leases, donates, exchanges or otherwise disposes of any land, it is to obtain a valuation of the land from the Valuer-General or a person who is qualified to practise as a land valuer under section 4 of the Land Valuers Act 2001 .

(3) A council may sell –

- (a) any land by auction or tender; or
- (b) any specific land by any other method it approves.

(4) A council may exchange land for other land –

- (a) if the valuations of each land are comparable in value; or
- (b) in any other case, as it considers appropriate.

(5) A contract pursuant to this section for the sale, lease, donation, exchange or other disposal of land which is public land is of no effect.

(6) A decision by a council under this section must be made by absolute majority.

177A. Public land

(1) The following land owned by a council is public land:

- (a) a public pier or public jetty;
- (b) any land that provides health, recreation, amusement or sporting facilities for public use;
- (c) any public park or garden;
- (d) any land acquired under section 176 for the purpose of establishing or extending public land;
- (e) any land shown on a subdivision plan as public open space that is acquired by a council under the Local Government (Building and Miscellaneous Provisions) Act 1993 ;
- (f) any other land that the council determines is public land;
- (g) any other prescribed land or class of land.

(2) The general manager is to –

- (a) keep lists or maps of all public land within the municipal area; and
- (b) make the lists and maps available for public inspection at any time during normal business hours.

178. Sale, exchange and disposal of public land

(1) A council may sell, lease, donate, exchange or otherwise dispose of public land owned by it in accordance with this section.

- (2) Public land that is leased for any period by a council remains public land during that period.
- (3) A resolution of the council to sell, lease, donate, exchange or otherwise dispose of public land is to be passed by an absolute majority.
- (4) If a council intends to sell, lease, donate, exchange or otherwise dispose of public land, the general manager is to—
 - (a) publish that intention on at least 2 separate occasions in a daily newspaper circulating in the municipal area; and
 - (ab) display a copy of the notice on any boundary of the public land that abuts a highway; and
 - (b) notify the public that objection to the proposed sale, lease, donation, exchange or disposal may be made to the general manager within 21 days of the date of the first publication.
- (5) If the general manager does not receive any objection under subsection (4) and an appeal is not made under section 178A , the council may sell, lease, donate, exchange or otherwise dispose of public land in accordance with its intention as published under subsection (4) .
- (6) The council must –
 - (a) consider any objection lodged; and
 - (b) by notice in writing within 7 days after making a decision to take or not to take any action under this section, advise any person who lodged an objection of –
 - (i) that decision; and
 - (ii) the right to appeal against that decision under section 178A .
- (7) The council must not decide to take any action under this section if –
 - (a) any objection lodged under this section is being considered; or
 - (b) an appeal made under section 178A has not yet been determined; or
 - (c) the Appeal Tribunal has made a determination under section 178B(b) or (c) .
- (8)

178A. Appeal

- (1) Any person who lodged an objection under section 178 may appeal to the Appeal Tribunal against the decision of a council under section 178(6) within 14 days after receipt of notice of that decision under section 178(6)(b) .
- (2) An appeal must be made in accordance with the Resource Management and Planning Appeal Tribunal Act 1993 .
- (3) An appeal may only be made on the ground that the decision of the council is not in the public interest in that –
 - (a) the community may suffer undue hardship due to the loss of access to, and the use of, the public land; or
 - (b) there is no similar facility available to the users of that facility.
- (4) The Appeal Tribunal is to hear and determine an appeal in accordance with the Resource Management and Planning Appeal Tribunal Act 1993 .
- (5) The decision of the Appeal Tribunal on hearing an appeal is final and section 25 of the Resource Management and Planning Appeal Tribunal Act 1993 does not apply.

178B. Determination of appeal

- In hearing an appeal against a decision of a council, the Appeal Tribunal may –
- (a) confirm that decision; or

- (b) set aside that decision; or
- (c) set aside that decision and –
 - (i) substitute another decision; or
 - (ii) remit the matter to the council for reconsideration.

179. Lease of public land for less than 5 years

A council may lease public land for a period not exceeding 5 years without complying with section 178 .

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181. Land held on trust

A council may hold land on trust subject to any conditions on which it is to be so held.

Division 2 - Fences, land repairs and trees

182. Fencing land

The general manager, by notice in writing served on the owner or occupier of land, may require the owner or occupier to fence the land if–

- (a) a dangerous operation is being carried out on that land; or
- (b) because of the state of the land or the buildings or structures on that land, it is dangerous for persons to enter onto that land; or
- (c) domestic animals are kept on the land.

183. Land reinstated

(1) The general manager, by notice in writing served on the owner or occupier of land, may require the owner or occupier to rehabilitate land from which soil, rock, sand or material has been extracted at any time after the commencement of this Act.

(2) The general manager, by notice in writing, may undertake not to make a requirement under subsection (1) in respect of any soil, rock, sand or material extracted before the date of that notice.

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185. Compliance with notice

(1) A person served with a notice under this Division must undertake any work required to be done under the notice in accordance with the terms of the notice and within the period specified in the notice.

(2) If the work is not undertaken within the period specified in the notice, the council may –

- (a) have the work done; and
- (b) charge the owner or occupier for the cost of that work.

(3) A charge under subsection (2) is a charge on the land and is recoverable in the same manner as rates and charges.

(4) If the council has work done under subsection (2) (a) the general manager is to notify the person accordingly.

Division 3 - Towns

186. Towns

- (1) The Minister, at the request of a council and by order, may –
 - (a) create a town and establish its boundaries; and
 - (b) abolish a town; and
 - (c) alter the boundaries of a town.
- (2) The Minister, at the request of a council and on the recommendation of the Nomenclature Board constituted under the Survey Co-ordination Act 1944 and by order, may –
 - (a) assign a name to a town; or
 - (b) alter the name of a town.

187. Polls

A council requesting the creation, abolition, naming or a change of name of a town is to provide the Minister with evidence that –

- (a) an elector poll has been conducted in the locality in relation to the request; and
- (b) the majority of electors in the locality is in favour of the council making the request.

188. Boundaries of towns

(1) Before requesting the creation of a town or alteration of the boundaries of a town, a council is to ensure that –

- (a) the boundaries of the existing or proposed town are identifiable; and
- (b) a plan of those boundaries is lodged in the prescribed manner.

(2) Houses which are not separated from the rest of the town by a substantial unbuilt area are to be included within the boundaries of the town.

(3) In creating a town, the Minister must ensure that its boundaries are wholly within the one municipal area.

Division 4 - Markets

189. Closure of local highways

(1) A council in respect of land or premises under its control or management may –

- (a) allow any person to operate a market subject to any terms and conditions it determines or operate a market itself; and
- (b) close a local highway or part of a local highway to general traffic for that purpose.

(2) If a council intends to close a local highway or part of a local highway under subsection (1), the general manager is to publish a notice of intention in a daily newspaper circulating in the municipal area.

(3) The notice is to specify –

- (a) the details of the closure of the local highway or part of the local highway; and
- (b) any other matter which may affect the rights of the community.

190. Objections

(1) A person may object to any matter specified in a notice of intention published under section 189 within 14 days after its publication.

(2) An objection is to be by notice in writing to the relevant general manager.

(3) A council is to consider any objection before closing a local highway or part of a local highway.

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Division 5 - Impounding of animals

193. Establishment of pounds

- (1) A council may establish pounds for the detention of stray animals.
- (2) A council is to ensure that –
 - (a) a pound is kept clean; and
 - (b) all necessary action is taken to prevent the spread of disease within and from a pound; and
 - (c) all animals kept in a pound are given sufficient food and water for their needs.

194. Impounding animals

The general manager may impound any animal found straying or at large –

- (a) on any highway; or
- (b) on any land owned by, or under the control of, the council.

195. Notice of impounding

- (1) If an animal has not been claimed by its owner or a person on behalf of the owner within 48 hours of it being impounded, the general manager is to give notice to the owner of the animal.
- (2) A notice is to contain the following information, details and statements:
 - (a) a description of the animal and any brands or marks;
 - (b) the place from which it was impounded;
 - (c) the date on which it was impounded;
 - (d) a statement that fees, costs and charges may be payable to the council in relation to its impounding, maintenance and treatment;
 - (e) if any fee, cost or charge referred to in paragraph (d) is ascertainable at the time the notice is prepared, the amount of that fee, cost or charge;
 - (f) a statement that the animal may be sold, given away or destroyed if –
 - (i) the animal is not claimed within 14 days after its impounding; or
 - (ii) any fee, cost or charge referred to in paragraph (d) is not paid within 14 days after the date of the notice;
 - (g) the date on or the period during which, and the place at which, the animal may be sold, given away or destroyed if it is not claimed.
- (3) A notice is to be given in writing and delivered to the owner by any means the general manager considers appropriate.
- (4) If the owner of an impounded animal cannot be ascertained or found, the general manager is to publish on at least one occasion a notice containing the particulars specified in subsection (2) in a daily newspaper circulating in the municipal area.

196. Fees, costs and charges

- (1) The owner of an impounded animal is liable to pay the fees, costs and charges incurred by the council in respect of the impounding, maintenance and treatment of the animal.
- (2)

(3) Any unpaid fees, costs and charges is a debt due to the council and may be recovered by the council in a court of competent jurisdiction.

(4) The general manager may detain an impounded animal until any fees, costs and charges specified in a notice are paid.

197. Sale or destruction of unclaimed animals

(1) A council may sell, give away free of charge or destroy any impounded animal if –

(a) no one has claimed it within 14 days after its impounding; or

(b) any fee, cost or charge payable by the owner has not been paid within 14 days of the date of the notice given under section 195 .

(2)

(3)

198. Destruction of animals

(1) The general manager may arrange for an impounded animal to be destroyed if, in the opinion of a qualified veterinary surgeon, the animal is–

(a) seriously diseased; or

(b) so injured or disabled as to be apparently in continual pain.

(2) If an animal is destroyed under subsection (1) within 14 days after its impounding, the general manager must notify the owner of the animal as soon as possible if the owner can be ascertained or found.

198A. Operation of private pounds

(1) A person may apply to a council for a permit to operate a pound, on his or her own behalf or on behalf of the council, for the detention of stray animals.

(2) The provisions of this Division apply to a person who operates a pound as if the person were a council.

Division 6 - Nuisances

199. Interpretation of Division 6

In this Division –

land, in relation to a public health matter, includes premises;

nuisance includes anything that –

(a) causes, or is likely to cause, danger or harm to the health, safety or welfare of the public; or

(b) causes, or is likely to cause, a risk to public health; or

(c) gives rise to unreasonable or excessive levels of noise or pollution; or

(d) is, or is likely to be, a fire risk; or

(e) constitutes an unsightly article or rubbish.

200. Abatement notices

(1) If a council is satisfied that a nuisance exists, the general manager must serve a notice on–

(a) any person whose act or default contributes to or causes the nuisance whether or not that act or default occurs wholly or only partly in the municipal area; or

(b) if the person cannot be ascertained or found, on the owner or occupier of the land on, or from which, the nuisance arises.

(1A) If the owner or occupier of land on or from which a nuisance arises cannot be ascertained or found, the general manager is to display a copy of a notice referred to in subsection (1) in a prominent position on that land.

(2) A notice under subsection (1) is to state –

- (a) the nature of the nuisance; and
- (b) any reasonably necessary action to be taken to abate the nuisance; and
- (c) the period within which such action is to be taken; and
- (d) the person or persons responsible for ensuring that such action is taken; and
- (e) that the council may take action under section 201 .
- (f)

(3) A person served with, or specified in, an abatement notice must comply with the notice, unless the person lodges an appeal under subsection (5) .

Penalty: Fine not exceeding 20 penalty units.

(4) For the purpose of ascertaining whether a nuisance exists, the general manager may–

- (a) enter and remain on land; and
- (b) do any thing reasonably necessary for that purpose.

(5) A person served with, or specified in, an abatement notice may appeal to a magistrate within 14 days after service of the notice on any one or more of the following grounds:

- (a) that a nuisance does not exist;
- (b) that an action required by the abatement notice is unreasonable;
- (c) that the period stated in the abatement notice is unreasonable.

(6) A magistrate may –

- (a) order that the person is to comply with the abatement notice; or
- (b) modify the abatement notice and order that the person and the council are to comply with the modified notice; or
- (c) order that the council withdraw the abatement notice.

201. General manager may take necessary action

(1) The general manager may take the necessary action to abate a nuisance if–

- (a) there is an immediate danger to any person or property; or
- (b) the person causing the nuisance cannot be ascertained or found; or
- (c) an abatement notice has not been complied with.

(2) If the general manager takes action under subsection (1) , the general manager is to notify the owner and occupier of the land on, or from which, the nuisance arises accordingly.

(3) For the purpose of abating a nuisance under subsection (1) , the general manager may authorise a person to–

- (a) enter and remain on any land; and
- (b) close off or fence any place; and
- (c) do anything reasonably necessary for that purpose.

(4) The council may charge the owner or occupier of land for the cost of any action taken under subsection (1) .

(5) A charge under subsection (4) is a charge on the land and is recoverable in the same manner as rates and charges.

202. Appeal against general manager's action

(1) If general manager takes action pursuant to section 201(1)(a) or (b) , the owner or occupier of the land on or from which the nuisance arises may appeal within 30 days after service of a notice under section 200 to a magistrate on any one or more of the following grounds:

- (a) that the action was unreasonable or unnecessary in the circumstances;
- (b) that the danger to any person or property was not so immediate as to justify the action.

(2) A magistrate may –

- (a) uphold the appeal; or
- (b) dismiss the appeal.

(3) If a magistrate upholds an appeal, the magistrate may –

- (a) award damages to the person who appealed for any loss suffered; and
- (b) make an order in respect of any charges under section 201 ; and
- (c) make an order requiring the council to undertake specified works.

203. Nuisance orders

A court, in addition to, or instead of, imposing a fine under section 200 (3) , may make an order –

- (a) requiring the defendant –
 - (i) to comply with the abatement notice within a period specified in the order or any other period the court determines; and
 - (ii) to take such further action as may be necessary to prevent the likelihood of the nuisance recurring; or
- (b) requiring the council to take the necessary action to abate the nuisance.

204. Costs

(1) In proceedings under this Division, a court may give any orders in relation to costs it thinks reasonable, including an order –

- (a) for the person on whom an abatement notice is served to pay the council any costs incurred by it –
 - (i) in the proceedings before it; and
 - (ii) in taking any action to abate a nuisance under section 200 or 201 ; or
- (b) for a council to pay any costs incurred by the owner or occupier of land in respect of which the council took action under section 200 or 201 .

(2) If any costs awarded to a council are not paid within 3 years, the council may sell the land in respect of which an abatement notice is served in accordance with Division 11 of Part 9 as if the unpaid costs were unpaid rates.

204A. Infringement notice for non-compliance with abatement notice

(1) An authorised officer of a council may issue and serve an infringement notice on a person if the authorised officer reasonably believes that the person has committed an offence against section 200(3) .

(2) An infringement notice may not be served on an individual who has not attained the age of 18 years.

(3) An infringement notice –

- (a) is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 ; and

(b) is not to relate to more than 3 offences against section 200(3) .

(4) The penalty payable under an infringement notice for an offence against section 200(3) to which the infringement notice relates is 3 penalty units.

Division 7 - Fees and charges

205. Fees and charges

(1) In addition to any other power to impose fees and charges but subject to subsection (2) , a council may impose fees and charges in respect of any one or all of the following matters:

- (a) the use of any property or facility owned, controlled, managed or maintained by the council;
- (b) services supplied at a person's request;
- (c) carrying out work at a person's request;
- (d) providing information or materials, or providing copies of, or extracts from, records of the council;
- (e) any application to the council;
- (f) any licence, permit, registration or authorization granted by the council;
- (g) any other prescribed matter.

(2) A council may not impose a fee or charge in respect of a matter if –

- (a) a fee or charge is prescribed in respect of that matter; or
- (b) this or any other Act provides that a fee or charge is not payable in respect of that matter.

(3) Any fee or charge under subsection (1) need not be fixed by reference to the cost to the council.

206. List of fees and charges

A general manager of a council is to –

- (a) keep a list of all fees and charges fixed under this Division; and
- (b) make the list available for public inspection during ordinary hours of business at the public office.

207. Remission of fees and charges

A council may remit all or part of any fee or charge paid or payable under this Division.

Division 8 - Council maps

208. Council map

(1) The general manager is to keep up to date a map of its municipal area showing the following:

- (a) all local highways maintainable by the council;
- (b) all other highways, other than State highways, made, formed, paved or otherwise made good;
- (c) all roads that an owner is liable to maintain;
- (d) all streets that the council has resolved to construct under Part V of the Local Government (Highways) Act 1982 ;
- (e) all roads leased under section 63 (2) of the Local Government (Highways) Act 1982 ;
- (f) all lands not wholly subject to a highway;
- (g) all declared landslip areas.

(2) One combined map may be used for the purposes of this section and section 12 of the *Urban Drainage Act 2013*.

(3) A map –

(a) may be on one sheet or several sheets and different information may be shown on different sheets of the same area; and

(ab) may be in an electronic form; and

(b) may be inspected, free of charge, by any person; and

(c) is evidence of the matters mentioned in subsection (1) (a) , (b) and (c) .

(4) Subsection (3) does not operate to fix accurately –

(a) the boundary of a highway unless it is indicated on the map that the relevant information was obtained by a registered surveyor or from a plan prepared by a registered surveyor; or

(b) a boundary other than the boundary of a highway.

209. Corrections of map

(1) An owner who is aggrieved by any matter included in the map under section 208 (1) (a) , (b) or (c) may, by notice in writing, request the council to correct the map.

(2) A notice is to –

(a) state the grounds for the request for correction; and

(b) be lodged with the general manager.

(3) If the council does not correct the map as requested within 120 days after the owner has lodged a notice, the owner may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision.

(4) If the council does not make a decision on whether or not to correct the map within 120 days after the owner has lodged a notice, the council is taken to have made a decision refusing to correct the map on the last day of that period.

PART 12A - Local Government Board

Division 1 - Local Government Board

210. Local Government Board

- (1) The Local Government Board is established.
- (2) The Board consists of –
 - (a) one person nominated by the Local Government Association of Tasmania; and
 - (b) one person nominated by the Local Government Managers Australia (Tasmania); and
 - (c) one person who is the chairperson; and
 - (d)
 - (e) the Director of Local Government or his or her nominee.
- (3) The persons referred to in subsection (2)(a) , (b) and (c) are appointed by the Minister.
- (4) If a nomination under subsection (2) is not made within 60 days after it is required to be made by the Minister, the Minister may appoint a person without such a nomination.
- (5) If a body referred to in subsection (2) ceases to exist or changes its name, the Governor, by order, may amend that subsection by substituting –
 - (a) the name of a body which the Governor is satisfied substantially represents the interests represented by the body which has ceased to exist; or
 - (b) the name of the body as changed.
- (5A) The Minister may, by instrument of appointment, appoint one or 2 additional persons to be members of the Board for the purposes of a review under this Part that is specified in the instrument.
- (6) Schedule 1 has effect with respect to membership of the Board.
- (7) Schedule 2 has effect with respect to meetings of the Board.

211. Functions and powers of Board

- (1) The Board has the following functions:
 - (a) to carry out reviews;
 - (b) to advise the Minister on any other matters the Minister may determine.
- (2) The Board may do anything necessary or convenient to perform its functions.

212. Staff

The Board may make arrangements with the Head of a State Service Agency for State Service officers and State Service employees employed in that Agency to be made available to the Board to enable it to perform its functions under this Act.

213. Delegation by Board

The Board, in carrying out a review under this Part, may delegate in writing to any person any of its functions relating to that review.

Division 2 - Reviews of councils

214. Reviews of council

- (1) The Minister may require the Board to carry out a general review of a council.

- (2) The Minister may require the Board to carry out a specific review relating to one or more of the matters specified in section 214A –
- (a) at any time; or
 - (b) at the request of a council; or
 - (c) on a petition proposed in accordance with section 57(2) of at least 20% of the electors in the municipal area.
- (3) Before carrying out a review of a council, the Board must give the council at least 30 days' notice of the date on which the review is to start, unless the council requests otherwise.
- (4) The Board may carry out any review in respect of more than one council.

214A. Scope of review

Any review may take into account any one or more of the following matters, in whole or in part:

- (a) the operation of a council, including the performance and exercise of the council's functions and powers, the administrative operation of the council, the governance of the council and the decision making of the council;
- (b) the boundaries of the municipal area and any electoral district;
- (c) the naming of the municipal area, council and electoral district;
- (d) the declaration of a municipal area or part of a municipal area as a city;
- (e) the naming, or changing of the name, of a city;
- (f) the creation or abolition of a municipal area or electoral district;
- (g) the division of the municipal area into electoral districts;
- (h) the combining of 2 or more municipal areas, parts of 2 or more municipal areas or 2 or more electoral districts;
- (i) the creation or abolition of councils;
- (j) the election of councillors of a municipal area;
- (k) the total numbers of persons to be elected as councillors of a municipal area or in respect of each electoral district;
- (l) any other factor;
- (m) any matter referred to it by the Minister.

214B. Supplementary review

- (1) The Board may recommend to the Minister that a supplementary review of a council be carried out to follow up on any matter arising from a general review.
- (2) The Minister may –
- (a) accept the recommendation; or
 - (b) refuse to accept the recommendation.

214C. Procedures for review

- (1) The Board may carry out any review in any manner it thinks appropriate.
- (2) In carrying out any review, the Board must provide –
- (a) reasonable opportunity for public consultation; and
 - (b) reasonable opportunity for any council affected by the review to make any submissions.
- (3) The Board is to publish in a daily newspaper circulating in the municipal area a statement –

- (a) specifying that a review is being carried out; and
 - (b) if it is a specific review, specifying any matter being reviewed; and
 - (c) inviting submissions relating to any matter referred to in section 214A or in the specific review.
- (4) Section 8 and Part 3 of the Commissions of Inquiry Act 1995 apply to a review carried out by the Board as if –
- (a) the Board were a Commission established under section 4 of that Act; and
 - (b) the review were the inquiry being conducted by that Commission under that Act.

214D. Report of review

- (1) The Board is to submit to the Minister a written report of any review it carries out together with its recommendations.
- (2) The Board must not make any recommendation relating to an electoral district unless satisfied that –
 - (a) it is in the best interests of the municipal area concerned; and
 - (b) it would lead to a fair representation of the community in the municipal area.
- (3) The Board must not make any recommendation relating to the declaration of a municipal area or part of a municipal area as a city except in prescribed circumstances.
- (4) On receipt of a report, the Minister is to –
 - (a) forward a copy of the report to –
 - (i) the council in respect of which the review was carried out; and
 - (ii) any other council the Minister considers may be affected by the recommendations of the Board; and
 - (b) invite any such council to make submissions to the Minister on any matter covered by the report within a specified period.
- (5) After considering any submissions, the Minister may –
 - (a) accept any or all of the Board's recommendations; or
 - (b) request the Board to reconsider any or all of its recommendations; or
 - (c) refer to the Board any alterations to its report requested by a council; or
 - (d) reject any or all of the Board's recommendations.
- (6) If the Minister rejects any of the Board's recommendations in respect of a review, the Minister may not make a recommendation under section 214E relating to that recommendation in respect of that review.
- (7) The council is to keep all matters contained in the report and recommendations of the Board forwarded by the Minister confidential until the report is published under subsection (8) .
- (8) The Minister is to cause to be published the report and recommendations of the Board, excluding any matter that the Board advises is confidential and the Minister considers is exempt information under the Right to Information Act 2009 .

214E. Result of review

- (1) As a result of any review, the Governor, by order and on the recommendation of the Minister, may do any one or more of the following:
 - (a) create a municipal area;
 - (b) abolish a municipal area;
 - (c) alter and define the boundaries of a municipal area;

- (d) combine 2 or more municipal areas or parts of such areas to form one municipal area;
- (e) divide a municipal area into 2 or more municipal areas or parts of 2 or more municipal areas;
- (f) name or change the name of a municipal area;
- (g) declare a municipal area or part of a municipal area to be a city;
- (h) name or change the name of a city;
- (i) create a council;
- (j) abolish a council;
- (k) dismiss all the councillors of a council;
- (l) name or change the name of a council;
- (m) determine the total number of persons to be elected as councillors of a municipal area;
- (n) determine the number of persons to be elected in respect of each electoral district;
- (o) divide a municipal area into 2 or more electoral districts;
- (p) abolish the division of a municipal area into electoral districts;
- (q) alter the boundaries of an electoral district;
- (r) combine 2 or more electoral districts in a municipal area to form one electoral district;
- (s) name or change the name of an electoral district;
- (t) declare that an election is to be held.

(2) In an order under subsection (1) , the Governor may fix a closing day, within the meaning of Part 15 , for an election to be held.

(3) An election fixed to be held under subsection (2) may be conducted in respect of any proposed municipal area or areas.

(4) An order under subsection (1)(k) may be made only in conjunction with an order made under subsection (1) (a) , (b) , (c) , (d) , (e) , (j) , (m) , (n) , (o) , (p) , (q) or (r) .

(5) The Governor, on the recommendation of the Minister and in relation to an order under subsection (1) , may make –

- (a) an order in respect of any appropriate savings and transitional matters; and
- (b) an order in respect of employees of a council that is affected by an order under subsection (1) ; and
- (c) an order relating to the requirements of the first meeting of a council of a proposed municipal area; and
- (d) any other order necessary or expedient.

(6) An order made under subsection (5) that is inconsistent with any provision of this Act or any other Act, other than section 45C of the Constitution Act 1934 , prevails over that provision to the extent of that inconsistency.

(7) An election for an existing or a proposed municipal area to be held as a result of an order made under this section is to be held in accordance with Part 15 and any regulations made for the purpose of that Part.

214F. Transfer and vesting of assets

If, as a result of an order under section 214E , a municipal area is abolished and combined with an existing or a newly created municipal area –

- (a) any assets of the council of the abolished municipal area are transferred to, and vest in, the council of the existing or newly created municipal area with effect from the day specified in that order; and

- (b) any legal proceedings by or against the council of the abolished municipal area in respect of those assets not determined before that day may be continued, on or after that day, by or against the council of the existing or newly created municipal area; and
- (c) a judgment or order of a court obtained before that day by or against the council of the abolished municipal area in respect of those assets may be enforced by or against the council of the existing or newly created municipal area; and
- (d) a document addressed to the council of the abolished municipal area in respect of those assets may be served on the council of the existing or newly created municipal area; and
- (e) a contract made or entered into by the council of an abolished municipal area in respect of those assets before that day but not performed or discharged before that day is taken to have been made or entered into by the council of the existing or newly created municipal area.

214G. Apportionment between councils

- (1) If, as a result of an order under section 214E , part of a municipal area is or is to be combined with an existing or a newly created municipal area, the Minister may require the councils of the municipal areas affected by the order to make an agreement in respect of the parts of the municipal area to be combined as to the apportionment of the assets between those councils or any proposed council.
- (2) The Minister may determine the apportionment as between the councils or proposed councils if the existing councils –
 - (a) fail to make an agreement in relation to the apportionment; or
 - (b) fail to agree on the apportionment of one or more assets.
- (3) The Minister may require an agreement to be made on or before a specified day.
- (4) The Minister may refer any matter that is in dispute between councils to an arbitrator appointed by the Minister for that purpose.
- (5) A decision of the Minister is final.
- (6) Any apportionment takes effect –
 - (a) on the day on which the order under section 214E takes effect; or
 - (b) on a later day if the Minister so determines.
- (7) Any assets apportioned under this section are vested in the relevant council on the day –
 - (a) specified in the agreement; or
 - (b) if there is no agreement, specified in the determination under subsection (2) .

214H. Costs

- (1) A council created or directly affected by an order under section 214E is to pay the costs and expenses in relation to that order or any transfer or vesting under sections 214F and 214G .
- (2) The Minister may apportion the costs and expenses among more than one council in any manner the Minister considers appropriate.

Division 3 - Reviews of single and joint authorities

214I. Review of single or joint authorities

- (1) The Board –
 - (a) is to carry out a review of a single authority or a joint authority if the Minister so directs; or
 - (b) may carry out the review if it so determines.
- (2) The review may cover any one or more of the following:

- (a) the structure and rules of a single authority or joint authority;
- (b) the relationship between the authority and the single authority council or a participating council;
- (c) the management and operations of the authority;
- (d) any other relevant matter.

214J. Procedure for review

- (1) The Board may carry out a review in any manner it considers appropriate.
- (2) Before carrying out a review of a single authority or joint authority, the Board is to give the single authority, joint authority, single authority council or participating councils at least 30 days' notice of the date on which the review is to start.
- (3) In carrying out the review, the Board must provide –
 - (a) reasonable opportunity for public consultation; and
 - (b) reasonable opportunity for a single authority, joint authority, single authority council or participating council to make any submissions.
- (4) Section 8 and Part 3 of the Commissions of Inquiry Act 1995 apply to a review carried out by the Board as if –
 - (a) the Board were a Commission established under section 4 of that Act; and
 - (b) the review were the inquiry being conducted by that Commission under that Act.

214K. Recommendations

- (1) The Board is to submit to the Minister a written report of any review it carries out together with its recommendations.
- (2) On receipt of a report, the Minister is to –
 - (a) forward a copy of the report to –
 - (i) the single authority or joint authority concerned; and
 - (ii) in relation to a joint authority, the participating councils; and
 - (iii) in relation to a single authority, the single authority council; and
 - (b) invite submissions on any matter in the forwarded report within a specified period.
- (3) After considering any submissions, the Minister may –
 - (a) accept any or all of the Board's recommendations; or
 - (b) request the Board to reconsider any or all of its recommendations; or
 - (c) refer to the Board any alterations to its report requested by the single authority, joint authority, single authority council or participating councils; or
 - (d) reject any or all of the Board's recommendations.
- (4) The single authority, joint authority, single authority council or each participating council is to keep all matters contained in the report and recommendations of the Board forwarded by the Minister confidential until published under subsection (5) .
- (5) The Minister is to cause to be published the report and the recommendations of the Board, excluding any matter that the Board advises is confidential and the Minister considers is exempt information under the Right to Information Act 2009 .

PART 12B - Performance Improvement Directions

214L. Recommendation for issuing performance improvement direction

- (1) The Director may recommend to the Minister that he or she issue a performance improvement direction to a council or councillor.
- (2) Without limiting the situations in which the Director may make a recommendation under subsection (1), the Director may make a recommendation under that subsection if, in the Director's opinion, the council or councillor –
 - (a) has failed to comply with a statutory requirement under this or any other Act or under subordinate legislation made under this or any other Act and the Director considers that the failure is not of a minor nature; or
 - (b) has failed on a number of occasions to comply with a statutory requirement, or a number of different statutory requirements, under this or any other Act or under subordinate legislation made under this or any other Act, regardless of whether any such failure is of a minor nature.
- (3) The recommendation is to include the grounds on which the recommendation is based.

214M. Minister may issue performance improvement direction

- (1) On receipt of the recommendation of the Director provided under section 214L, the Minister may –
 - (a) issue to a council or a councillor a direction requiring the council or councillor to take, refrain from taking or cease taking an action for the purpose of complying with the statutory obligations of the council or councillor under this or any other Act; or
 - (b) refuse to issue such a direction.
- (2) The Minister may issue a direction to a council or councillor only if satisfied that it is appropriate to do so after considering any submissions made under section 214N(3)(e) and the recommendation of the Director provided under section 214L.
- (3) A direction may require the council or councillor –
 - (a) to take, refrain from taking or cease taking an action within the period specified in the direction; and
 - (b) to notify the Minister, in writing and within the period specified in the direction, of the steps that the council or councillor has taken, or proposes to take, to comply with the direction.
- (4) A direction may set out the consequences of failing to comply with the direction.

214N. Right of council or councillor to make submissions

- (1) If the Minister is proposing to issue a performance improvement direction to a council, the Minister is to notify the council of that fact.
- (2) If the Minister is proposing to issue a performance improvement direction to a councillor, the Minister is to notify the councillor and the relevant council of that fact.
- (3) The notice provided under subsection (1) or (2) is to –
 - (a) be in writing; and
 - (b) include a draft of the proposed performance improvement direction; and
 - (c) include the grounds for the making of the performance improvement direction; and
 - (d) in the case of a notice issued to a council, notify the council that it may make written submissions to the Minister on the matter within the period, of not less than 14 days, specified in the notice; and
 - (e) in the case of a notice issued to a councillor and the relevant council, notify both the councillor and the council that he or she and it may make written submissions to the Minister on the matter within the

period, of not less than 14 days, specified in the notice.

(4) The council or councillor may make written submissions to the Minister in relation to the proposed performance improvement direction within the period specified in the notice provided under subsection (1) or (2) .

214O. Consequences of failing to comply with performance improvement direction

(1) If a council or councillor fails to comply with a performance improvement direction, the Minister may do one or more of the following:

(a) suspend all of the councillors or the councillor from office for a period not exceeding 6 months;

(b) under section 214 , require the Board to carry out a general review, or a specific review, of the council;

(c) under section 215 , establish a Board of Inquiry to investigate the council.

(2) If the Minister suspends all of the councillors of a council, the Governor, under Division 2 of Part 13 , may appoint a person as commissioner for that council during that suspension and that Division applies in relation to the appointment of the commissioner.

Division 9 -

PART 13 - Inquiries

Division 1 - Board of Inquiry

215. Board of Inquiry

(1) The Minister may establish a Board of Inquiry to investigate a council, single authority or joint authority or any matter relating to the administration of this Act if—

(a)

(b) the Minister is satisfied that a matter justifies its establishment.

(2) The Minister is to notify a council, single authority or joint authority of—

(a) the establishment of a Board of Inquiry to investigate the council, single authority or joint authority; and

(b) the reason for the inquiry; and

(c) the subject matter of the inquiry.

(3) A Board of Inquiry consists of one or more persons appointed by the Minister.

(4) A member of a Board of Inquiry is entitled to such allowances as the Minister determines.

(5) If the Minister establishes a Board of Inquiry to investigate a council, the Minister, at any time during the inquiry, may suspend all the councillors, or any of the councillors, from office for the period ending on the day on which —

(a) the Minister gives a direction under section 225(2) ; or

(b) an order under section 226 dismissing all the councillors or any councillor takes effect.

215A. Operation during investigation

If the Minister establishes a Board of Inquiry to investigate a single authority or joint authority, the Minister may —

(a) order the suspension of operations of the authority; or

(b) suspend all the members of the board of management of the authority for a period not exceeding 6 months and appoint a person to carry out the functions and powers of the board of management.

216. Functions of Board of Inquiry

(1) The functions of a Board of Inquiry are —

(a) to conduct an inquiry into any matter referred to it by the Minister; and

(b) to make recommendations to the Minister as a result of its inquiry.

(2) A Board of Inquiry may do anything necessary or convenient to carry out its functions.

217. Powers of Board of Inquiry

(1) A Board of Inquiry may —

(aa) require any person to provide, in writing and within the time specified in the requirement, answers to the questions asked, or the information specified, in the requirement; and

(a) summon any person to appear before it to give evidence and produce any such documents as are specified in the summons; and

(b) require any person appearing before it to produce any document; and

(c) require any person appearing before it to give evidence on oath or affirmation; and

(d) require any person appearing before it to answer questions; and

(e) adjourn the inquiry from time to time.

(2) A person must not, without reasonable excuse –

(aa) fail to comply with a requirement referred to in subsection (1)(aa) ; or

(a) fail to attend an inquiry as required by summons or from day to day during the inquiry; or

(b) fail to produce a document when required to do so; or

(c) fail to answer questions required to be answered; or

(d) fail to comply with the requirement to affirm or be sworn.

Penalty: Fine not exceeding 50 penalty units.

218. Procedure of Board of Inquiry

(1) A Board of Inquiry –

(a) is to conduct an inquiry with as little formality and technicality as a proper consideration of the matter before it permits; and

(b) is not bound by the rules of evidence and may inform itself on any matter in any way it considers appropriate; and

(c) must observe the rules of natural justice.

(2) Subject to subsection (1) , a Board of Inquiry may regulate its own procedure.

(3) Nothing in this section requires a Board of Inquiry to –

(a) hold a public hearing; or

(b) permit the cross-examination of a witness.

219. Submissions

A Board of Inquiry must provide adequate opportunity for a council, councillor (whether suspended or not), single authority or joint authority or any person directly affected by the inquiry to make submissions relating to the subject matter of the inquiry of the Board of Inquiry.

220. Representation

(1) A person summoned to attend before a Board of Inquiry may, with the approval of the Board of Inquiry, be represented by a legal practitioner or agent.

(2) A legal practitioner or agent who represents any person may examine witnesses and address the Board of Inquiry on behalf of the person.

(3) Nothing in this section –

(a) entitles a legal practitioner or agent who represents a person to cross-examine a witness without the permission of the Board of Inquiry; or

(b) requires the Board of Inquiry to permit the cross-examination of a witness by such a legal practitioner or agent.

221. Summons

A summons is to be served –

(a) personally; or

(b) by leaving it at the usual place of residence or business of the person to whom it is addressed.

222. Access to documents, &c.

(1) For the purposes of investigating any matter which is the subject of an inquiry, a Board of Inquiry or a person authorized by a Board of Inquiry for the purpose, may –

(a) require any person to produce, or give access to, any documents and records which the Board of Inquiry considers may be relevant to the inquiry and which are in the possession or control of the person; and

(b) inspect and take copies of or take extracts from any such document or record; and

(c) require any person to give such assistance as may be required.

(1A) A person must not refuse or fail to comply with a requirement made under subsection (1) .

Penalty: Fine not exceeding 50 penalty units.

(2) A person must not obstruct or hinder another person in the exercise of a power or the performance of a function under this section.

Penalty: Fine not exceeding 10 penalty units.

223. Disclosure of information

(1) A person authorized by a Board of Inquiry under section 222 must not disclose any information acquired in the exercise of any powers under that section except to a member of the Board of Inquiry.

Penalty: Fine not exceeding 10 penalty units.

(2) A member of a Board of Inquiry must not disclose any information acquired in the exercise of any powers or performance of any functions except in the exercise of those powers or the performance of those functions as may be required under this Act.

Penalty: Fine not exceeding 10 penalty units.

223A. Disclosure of confidential information provided by Board of Inquiry

(1) Except as required, or allowed, by this Act, another Act or any other law, a person must not disclose information provided to him or her by the Board of Inquiry in the course of an inquiry and on the condition that the person keep that information private and confidential.

Penalty: Fine not exceeding 50 penalty units.

(2) In addition to, or in substitution for, the imposition of a penalty under subsection (1) , a court may make one or more of the following orders:

(a) if the defendant is a councillor, an order dismissing the councillor (whether suspended or not);

(b) if the defendant is a councillor (whether suspended or not) or any other person, an order barring the councillor or person from nominating as a candidate for any election for a period not exceeding 7 years.

224. Report of inquiry

(1) A Board of Inquiry is to submit a report of its findings and recommendations to the Minister.

(2) The Minister may direct a Board of Inquiry to reconsider its report if, in the opinion of the Minister, its findings or recommendations –

(a) were made as a result of an inquiry conducted contrary to law; or

(b) are unjust, oppressive, discriminatory or unreasonable; or

(c) are based, wholly or partly, on a mistake of fact.

225. Result of inquiry

(1) After considering a report from a Board of Inquiry, the Minister, by notice in writing, must –

- (a) advise the council, councillor (whether suspended or not), single authority or joint authority affected by the report of the findings and recommendations of the Board of Inquiry; and
 - (b) invite the council, councillor (whether suspended or not), single authority or joint authority to make any further submissions within 14 days of the notice or such other period the Minister may allow.
- (2) After considering any submissions, the Minister may direct a council, councillor, single authority or joint authority to take any one or more of the following actions within the period specified in that direction:
- (a) that the council, councillor, single authority or joint authority rectify or mitigate the effects of its, his or her action;
 - (b) that the council, councillor, single authority or joint authority discontinue its, his or her action;
 - (c) that the council, councillor, single authority or joint authority give reasons for its, his or her action;
 - (d) that the council, councillor, single authority or joint authority take such other steps as the Minister thinks necessary.
- (3) In giving a direction to a council, councillor, single authority or joint authority, the Minister may require the council, councillor, single authority or joint authority to notify, within a specified period—
- (a) the steps the council, councillor, single authority or joint authority has taken or proposes to take; or
 - (b) the reasons why the council, councillor, single authority or joint authority has not taken, or is not proposing to take, any steps.

226. Dismissal of councillors

- (1) Instead of making a direction to a council or councillor under section 225 (2) , the Minister may recommend that the Governor by order dismiss any councillor or all councillors if, in the opinion of the Minister—
- (a) the failure of the councillor or council to perform any function has seriously affected the operation of the council; or
 - (b) the irregularity of the conduct of the councillor or council has seriously affected the operation of the council.
- (1A) In subsection (1) –
- operation of the council* includes the performance and exercise of the council's functions and powers, the administrative operation of the council, the governance of the council and the decision making of the council.
- (2) If a councillor or council fails to comply with a direction under section 225 (2) within the specified period the Minister may recommend that the Governor by order dismiss the councillor or all councillors.
- (3) An order for dismissal of a councillor or all councillors made by the Governor as a result of a recommendation by the Minister under this section may specify that the dismissal takes effect—
- (a) on the date specified in the order; or
 - (b) on the happening of an event specified in the order.

226A. Winding-up of authority

- (1) Instead of making a direction to a single authority or joint authority under section 225(2) , the Minister may wind up a single authority or joint authority.
- (2) If the Minister winds up a single authority or joint authority, the Minister may –
- (a) dispose, or arrange the disposal, of any assets and liabilities of the authority; and
 - (b) deal with any other matter arising out of the report of a Board of Inquiry.
- (3) A single authority or joint authority that is wound up under this section is liable to pay the costs incurred by a Board of Inquiry investigating the authority.

227. Immunity in publishing reports

- (1) An action does not lie against a person who publishes in good faith and for the information of the public –
 - (a) a copy or abstract of, or an extract from, a report made by a Board of Inquiry; or
 - (b) any accurate report of any proceedings before a Board of Inquiry held in public.
- (2) A person publishes in good faith if the publication is not motivated by ill will or any other improper motive.

228. Confidentiality

Any records and documents of a Board of Inquiry are exempt from the provisions of the Right to Information Act 2009 .

229. Cost of inquiry

The Minister may require a council to pay any costs associated with an inquiry into its affairs under this Part.

Division 2 - Commissioners

230. Appointment of commissioner on suspension

If the Minister suspends all of the councillors of a council, the Governor may appoint a person as commissioner for that council during that suspension.

231. Appointment of commissioner on dismissal

- (1) On the dismissal of all of the councillors of a council, the Governor may appoint a person as commissioner for the council for a period not exceeding 12 months.
- (2) One person may be appointed as commissioner in respect of more than one council.
- (3) The Governor, on the recommendation of the Minister, may extend the appointment of a commissioner for any further period or periods of 12 months.

232. Powers and functions of commissioner

A commissioner of a council may exercise the powers and perform the functions of the councillors.

233. Remuneration of commissioner

- (1) A commissioner is entitled to such remuneration and allowances as are specified in the instrument of appointment.
- (2) The council in respect of which a commissioner is appointed is to pay the remuneration and allowances of the commissioner.

234. Termination of appointment as commissioner

- (1) The Governor, on the recommendation of the Minister, may –
 - (a) terminate the appointment of a commissioner at any time; and
 - (b) appoint another commissioner for the balance of the term of that appointment.
- (2) If the appointment of a commissioner is terminated otherwise than as a result of holding an election, the Governor may restore the council in respect of which the commissioner was appointed by re-appointing all of the councillors for the balance of their terms.

PART 14 - Legal Proceedings

Division 1 - Proof and evidence

235. Proof of certain matters

In any proceedings instituted by or against a council under this or any other Act it is not necessary to prove any of the following:

- (a) the name of the council;
- (b) any person who is or has been a councillor or a member of the council;
- (c) the election or appointment of its councillors;
- (d) the boundaries of any municipal area, town or electoral district;
- (e) the authority of a person to institute or carry on proceedings on behalf of the council.

236. Averments

In any proceedings instituted by or against a council, an averment in a complaint of any one or more of the following is evidence of the fact so averred:

- (a) that a person is, or is not, the holder of a licence under this Act;
- (b) that premises are, or are not, registered or licensed under this Act;
- (c) that a person is or is not, or was or was not, the owner or occupier of any specified premises or land;
- (d) that a person is, or is not, the owner of an animal;
- (e) in respect of an offence relating to highways, waterworks, sewers or drains that any fact is as averred;
- (f) that the council is the owner of, or has the control of, land;
- (g) in respect of the use of water on land to which water is supplied by the council, that the water used was supplied by the council.

237. Authentication of certain documents

Any summons, notice or other document requiring authentication by the council is sufficiently authenticated, without the seal of the council, if it is signed –

- (a) by 2 councillors; or
- (b) by the general manager; or
- (c) in accordance with any by-law.

238. Minutes

(1) Any of the following is evidence of any election or appointment of a councillor or employee or proceedings at a meeting of a council or council committee:

- (a) a duly confirmed entry in the minutes of the council or committee; or
- (b) a certified copy of, or extract from, an entry in the minutes of the council sealed with the seal of the council and signed by one of the following:
 - (i) the mayor;
 - (ii) the chairperson;
 - (iii) the general manager.

(2) For a document to be evidence under this section, it is not necessary to prove any of the following:

- (a) that a meeting referred to in the document was duly convened or held;
- (b) that the persons attending the meeting were councillors or members of the committee to which the entry relates;
- (c) the signature of the mayor, deputy mayor, chairperson or general manager;
- (d) that any person is or was the mayor, deputy mayor or general manager.

239. Gazette

A copy of the *Gazette* containing any statement required under this Act to be notified in the *Gazette* is evidence of any fact so notified.

Division 2 - Actions by or against councils

240. Appearances in court

- (1) A council may appear before any court or in any proceedings by –
 - (a) its general manager; or
 - (b) any other person authorized by the council or general manager.
- (2) A person referred to in subsection (1) may, on behalf of a council, institute and carry on any proceedings which the council may institute and carry on under this or any other Act.

241. Penalties

Any penalties recovered by a council in proceedings brought by it under this or any other Act are payable to the council.

Division 3 - Validations and presumptions

242. Named as owner

- (1) A person named in any resolution of, or notice or other document issued by, a council as the owner of the land is taken to be the owner of the land for the purposes of this Act unless that person shows to the satisfaction of the general manager that he or she is not the owner.
- (2) Any resolution, notice or other document is not invalidated by reason only that –
 - (a) it names as owner of land a person who is not the owner of the land; or
 - (b) the name of a person has been altered or struck out and another name has been substituted.

243. Validation of proclamations, &c.

- (1) Any proclamation or order purporting to be made under this Act is not invalidated by reason only of a non-compliance with any preliminary requirement of this Act.
- (2) Any proclamation, order, by-law, notice or other document under this Act is not invalidated by reason only of a defect in its form.

Division 4 - Mutual rights of owners and occupiers

244. Application

Nothing in this Division operates inconsistently with any other enactment or with any contract between persons whose rights would otherwise be affected.

245. Rights against owner enforceable against occupier

- (1) If the owner of land is primarily liable to pay the council any amount of money, the occupier of the land is liable to pay the council that amount.

(2) Unless the occupier refuses to disclose the amount of rent and the name and address of the person to whom it is payable, the occupier is not required under subsection (1) to pay any greater amount than the amount of the rent –

(a) for the time being due; or

(b) which became payable after demand by the council without first deducting the amount demanded.

(3) The burden of proving that he or she is not liable by reason of subsection (2) to pay the full amount lies on the occupier.

(4) The person entitled to receive the rent from the occupier is to allow the occupier to withhold any money which is recoverable under this section.

(5) The council's receipt is a good discharge of the occupier's liability to pay the rent.

(6) In this section *rent* means rent-service.

246. Certain notices to be passed on

An occupier of land who holds as tenant or licensee of another person and who receives any order, notice or other document –

(a) addressed to the owner of the land, is to give it to the owner; or

(b) requiring the occupier to do any work on the land which may affect the land after occupation ceases, is to give a copy of it to the owner.

247. Right to carry out works

(1) If any work is to be carried out by the owner or occupier of land under this Act –

(a) which does not affect the land after the occupier's occupation ceases, the occupier is, if not bound to carry out the work, entitled to do so; or

(b) which may affect the land, the owner is, if not bound to carry out the work, entitled to do so.

(2) If the person entitled to carry out work elects to do so the person –

(a) is to notify the general manager accordingly in writing; and

(b) is liable to all the provisions of the Act relating to the work as if bound in the first instance to carry it out; and

(c) is entitled to recover costs and expenses of carrying out the work from the person otherwise bound to carry it out, except for any part which might otherwise be recovered from him or her.

(3) If any dispute arises between any person carrying out any work and another person or person's agent affected by the manner or form in which it is carried out, the dispute may be referred –

(a) if the parties agree –

(i) to any justice; or

(ii) to any engineer and architect, who are to decide the matter between them; or

(b) if an amount in excess of \$1 000 appears to be involved, to a magistrate.

(4) The person or court deciding a dispute under subsection (3) may decide which party is to bear the expense of doing anything in dispute.

(5) If a dispute is decided under subsection (3), the rights of the parties are as if the party carrying out the work had covenanted with the other party or, if he or she is acting as agent, his or her principal, to carry out the work in accordance with the decision.

(6) If a dispute arises under this section, the general manager may direct that time for carrying out the work does not run until the dispute is determined and may revoke any such direction.

248. Right of occupier to act in certain cases on default of owner

If an owner fails to carry out any work required under this Act, the occupier, if not entitled under section 247 , may carry out the work with the approval of the general manager.

249. Primary right of occupier bearing owner's liability

(1) If an occupier is compelled under this or any other Act to do any work or pay any money which ought primarily to be done or paid by the owner or does any work pursuant to section 248 –

- (a) the expense of the work or the money paid is to be repaid to the occupier by the owner; and
- (b) the occupier may deduct the amount out of the rent or other money becoming due to the owner.

(2) If any money leviable by distress for which, as between owner and occupier, the owner is wholly liable, has been demanded from the occupier by the council, the occupier is entitled to recover from the owner double the value of the goods so sold with costs as between solicitor and client if –

- (a) the occupier does not owe any rent or other money in respect of the occupation and has given notice of the demand to the owner; and
- (b) the occupier's goods are distrained or seized and sold for the satisfaction of the money demanded.

250. Ultimate liability

Subject to any express provision to the contrary in any enactment and notwithstanding any provision for primary liability, the liability to pay for any work required under this Act as between owner and occupier, if the reason for requiring the work was –

- (a) a default of the occupier, is to be borne by the occupier; or
- (b) a defect of or in the land which the occupier was not bound to the owner to rectify, is to be borne by the owner; or
- (c) the improvement of the land, its neighbourhood or the municipal area –
 - (i) to be borne by the occupier, if the benefit of the work may not necessarily outlast the occupation; and
 - (ii) to be borne by the owner, in any other case.

251. Mesne tenants

(1) In this section –

mesne means any person having a present estate or interest in the land derived from that of the owner and from which that of the occupier is derived;

occupier means a person in actual occupation of land who is not owner of the land;

owner means the Crown or a person holding the land as tenant in chief in fee, whether or not the person has a good title.

(2) If there is one mesne or more between the occupier and the owner, this Division applies as if –

- (a) in respect of the occupier and the mesne, or the next mesne, if more than one, that mesne were the owner; and
- (b) in respect of the owner and the mesne, or the next mesne, if more than one, that mesne were the occupier; and
- (c) in respect of 2 mesnes not having a third between them, as if the superior were the owner and the inferior were the occupier.

(3) The council is not bound if there are owner, occupier and mesne to have any regard to the mesne, but no act of the council is prejudiced by its treating the mesne as either owner or occupier.

252. Several owners

(1) If any sum of money is payable to the council under this Act by the owner of any land, and the rights of ownership of the land belong jointly, severally or successively, to more persons than one –

(a) the council may proceed –

(i) against each of those persons severally in respect of the ultimate liability under this section; or

(ii) against any of those persons who are known to it and may be conveniently served with the writ or other process jointly in respect of the whole sum; or

(iii) against the person seized in possession of the land in respect of the whole sum; and

(b) each of those persons is liable in the last resort to contribute in proportion to the value of the interest in the land; and

(c) if any of those persons cannot be found or made a party to the proceedings for contribution, the others are liable rateably for that person's contribution.

(2) Any person may obtain valuations under the Valuation of Land Act 2001 of all interests in land which affect the prosecution or defence of a claim to which this section applies.

(3) Nothing in this section affects the operation of the rules of equity or the Settled Land Act 1884 .

Division 5 - Proceedings for offences

252A. Proceedings for offences

(1) Notwithstanding any provision of any other Act, any proceedings for an offence under this Act may be instituted within 2 years after the offence is alleged to have been committed.

(2) This section only applies to an offence that allegedly has been committed on or after the commencement of the relevant provision of the Local Government Amendment Act 2005 .

PART 15 - Council Elections

Division 1 - Preliminary

253.

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253A. Acting general manager

The Electoral Commissioner may nominate a person to exercise the powers and perform the functions of a general manager under this Part in relation to an election for a proposed municipal area.

253B. Prescribed procedures for certain elections

Regulations may provide for different procedures than specified in this Part for the purpose of an election for an existing municipal area or proposed municipal area to be held as a result of an order made under section 214E .

Division 2 - Electors

254. Entitlement to be on list of electors and to vote in election

(1) A person is entitled to be enrolled on the electoral roll kept under section 258(7) in respect of an electoral area if the person is enrolled on the electoral roll for the House of Assembly in respect of an address within that electoral area.

(2) A person, other than a person referred to in subsection (1) , is entitled to be enrolled on the electoral roll kept under section 258(1) in respect of an electoral area if the person –

(a) is an owner or occupier of land in the electoral area; and

(b) is over the age of 18; and

(c) is not serving a term of imprisonment; and

(d) is not subject to an assessment order or treatment order under the Mental Health Act 2013 or an order under the Guardianship and Administration Act 1995 .

(3) A person is entitled to be enrolled on the electoral roll kept under section 258(1) in respect of an electoral area if a nomination of the person to vote in respect of the electoral area on behalf of a corporate body has effect under section 255 .

(4) A person is entitled to vote in an election in respect of an electoral area if the person –

(a) is on a list of electors kept under section 261(2) in respect of the electoral area; and

(b) is, or will be, 18 years old or more before the closing day for the election.

(5) A person is entitled to vote in an election in respect of an electoral area if the person is on a list of electors kept under section 261(1) in respect of the electoral area.

(6) A person is entitled to vote, on behalf of a corporate body, in an election in respect of an electoral area, if –

(a) a nomination of the person to vote in respect of the electoral area on behalf of the corporate body has effect under section 255 ; and

(b) the person is on a list of electors kept under section 261(1) in respect of the electoral area.

(7) A person who is a resident in one municipal area and is also an owner or occupier of land in one or more other municipal areas, is entitled to vote, in an election, in respect of each of those municipal areas in respect of which the person is on a list of electors kept under section 261(1) or (2) .

255. Voting by corporations

- (1) A corporate body which owns or occupies any land in a municipal area is entitled to nominate one person in any municipal area to vote on its behalf at an election in that municipal area.
- (2) A nomination under subsection (1) is to be –
 - (a) in an approved form; and
 - (b) signed by the person nominated; and
 - (c) lodged with the general manager.
- (3) The general manager must do one of the following in respect of a nomination:
 - (a) accept the nomination, unless paragraph (b) or (c) applies in respect of the nomination;
 - (b) reject the nomination if satisfied that the corporate body is not the owner or occupier of the land;
 - (c) reject the nomination if satisfied that the person nominated–
 - (i) is not over the age of 18; or
 - (ii) is serving a term of imprisonment; or
 - (iia) is a person whose nomination in respect of another corporate body is in force in respect of the municipal area; or
 - (iii) is subject to an assessment order or treatment order under the Mental Health Act 2013 or an order under the Guardianship and Administration Act 1995 .
- (4)
- (5) A nomination has effect until –
 - (a) a fresh nomination is made by the body corporate; or
 - (b) it appears to the general manager that –
 - (i) there has been a change in the ownership or occupation of the land in respect of which the entitlement to vote arises; or
 - (ii) the nominated person is no longer entitled to be nominated; or
 - (ba) the name of the person is deleted under section 258(6) ; or
 - (c) the nomination has been revoked.
- (6) Subject to section 256 , a person may vote on behalf of a corporate body without prejudice to any other entitlement to vote.
- (7) A corporate body may only nominate one person to vote on its behalf at an election in a municipal area regardless of whether it owns or occupies land in several locations in that municipal area.

256. Maximum number of votes

- (1) An elector, in an election in respect of one municipal area, has no more than 2 votes of which –
 - (a) only one vote is in his or her own right; and
 - (b) only one vote is on behalf of a corporate body under section 255 .
- (2) In an election for a divided municipal area, an elector has no more than 2 votes, even though more than one election for councillors is to be held, of which –
 - (a) only one vote is in his or her own right; and
 - (b) only one vote is on behalf of a corporate body under section 255 .

257. Electoral enrolment form

- (1) A person who is entitled under section 254 (2) to be enrolled on the electoral roll kept under section 258(1) in respect of an electoral area may lodge with the general manager an electoral enrolment form in respect of the

electoral area.

(2) An electoral enrolment form lodged under subsection (1) is to be in an approved form.

258. Electoral roll

(1) The general manager is to keep, in a manner determined by the Electoral Commissioner, an electoral roll in respect of each electoral area.

(2) An electoral roll kept under subsection (1) in respect of an electoral area by the general manager is to contain—

(a) a list of persons –

(i) who are entitled under section 254(2) to be enrolled on the electoral roll and who have lodged under section 257 an electoral enrolment form in respect of the electoral area; or

(ii) who are entitled under section 254(3) to be enrolled on the electoral roll; and

(b) the address or location of the land in respect of which the person is entitled to be enrolled on the electoral roll; and

(c) any other matter the Electoral Commissioner considers appropriate.

(3) The general manager is to make any alterations and additions to the electoral roll necessary to keep the roll accurate and up to date.

(4) The general manager may, either on application or at his or her discretion, delete or exclude a person's address from the electoral roll if satisfied that the safety of the person or the person's family, may be at risk.

(5) The general manager, by notice in writing, may require –

(a) a person to confirm in writing that the person is an occupier or owner of land in the municipal area; and

(b) a corporate body to confirm in writing that –

(i) the corporate body is an occupier or owner of land in the municipal area; and

(ii) the nominated person is still entitled to be nominated.

(6) If a person or corporate body has not complied with a requirement under subsection (5) within the period specified in the notice, the general manager must –

(a) delete the name and address of that person or person nominated to vote on behalf of that body from the electoral roll; and

(b) advise that person or body in an approved form.

(7) The Electoral Commissioner is to keep in respect of an electoral area an electoral roll of persons entitled to be enrolled on the electoral roll under section 254 (1) .

259. Inspection of electoral roll

(1) Any person may, at any reasonable time and free of charge, inspect the electoral roll kept under section 258 (1) .

(2) A person who is entitled to be enrolled on an electoral roll in respect of an electoral area may, by notice in writing to the general manager, object to –

(a) an error, in the electoral roll, in the particulars in respect of any person or body corporate; or

(b) the omission of the name of any person from the electoral roll, if –

(i) the person whose name has been omitted has lodged an electoral enrolment form under section 257 in respect of the electoral area; or

(ii) a nomination, to vote on behalf of a corporate body in the electoral area, of the person whose name has been omitted, has effect under section 255 .

(3) On receipt of an objection, the general manager may make any adjustments necessary to correct the electoral roll kept under section 258(1) .

260. Closure of electoral roll

The electoral rolls kept under section 258 are to be closed at 6.00 p.m. on the 7th Thursday before the closing day in the electoral area in respect of which the electoral roll is kept, unless otherwise determined under section 308(3A)(c) .

261. List of electors

(1) The general manager is to –

(a) prepare and keep a list of electors from the electoral roll kept under section 258 (1) as at the time of closure referred to in section 260 ; and

(b) certify that the list is correct.

(2) The Electoral Commissioner is to–

(a) prepare and keep a list of electors from the electoral roll kept under section 258 (7) for the House of Assembly as at the time of closure referred to in section 260 ; and

(b) certify that the list is correct.

(3) The lists of electors prepared under subsections (1) and (2) form one list but may consist of 2 or more parts.

(4) The Electoral Commissioner is to provide the relevant returning officer with a copy of the certified list of electors.

(5) Until after the closing day–

(a) no further names or details may be included on the list of electors except names omitted in error; and

(b) no other alterations or cancellations may be made to the list of electors except to correct any error.

(6) The returning officer on request is to provide each candidate in an electoral area with one copy of the list of electors free of charge as soon as practicable after the roll closure day.

(7) A person, body or organisation must not, without reasonable excuse, use information obtained from a list of electors provided under subsection (6) , unless the information is used for purposes connected with an election.

Penalty: Fine not exceeding 50 penalty units.

261A. Inspection of list of electors

Any person may, at any reasonable time and free of charge, inspect the list of electors kept under section 261(1) and (2) .

262. Reviews

(1) A corporate body or person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the general manager's–

(a) rejection of a nomination under section 255 (3) ; or

(b) failure to delete or exclude the person's address from the electoral roll under section 258 (4) ; or

(c) failure to make an adjustment under section 259 (3) .

(2) If the review is not determined on or before the roll closure day, the decision of the Court determining the review does not affect the holding or result of an election.

(3) If the Magistrates Court (Administrative Appeals Division) varies an adjustment made by the general manager under section 259 (3) after the roll closure day, the electoral roll kept under section 258(1) is not to be altered until it is reopened.

(4) If the variation by the Magistrates Court (Administrative Appeals Division) would entitle the objector to vote at an election in the relevant electoral area, the objector may vote at the forthcoming election in that electoral area as provided in section 286 .

Division 3 - Issuing places and electoral officials

263. Issuing places

- (1) The Electoral Commissioner may appoint any place to be an issuing place for an election in respect of a council for a municipal area where supplementary ballot material may be issued and ballot material received.
- (2) The Electoral Commissioner may appoint a vehicle as an issuing place.
- (3) The Electoral Commissioner is to determine the hours of operation of an issuing place.
- (4) An election is not void if an issuing place is not open during its hours of operation.
- (5) Once a notice of election is given, an issuing place appointed under this section is to remain an issuing place for the purpose of the election.

264. Returning officer

- (1) In respect of any election, the Electoral Commissioner is to appoint a person as returning officer for that election.
- (2) The Electoral Commissioner may issue directions to the returning officer.
- (3) The returning officer is to carry out such duties as the Electoral Commissioner determines.
- (4) If the returning officer is unable to perform any functions under this Part, the Electoral Commissioner is to appoint a substitute to act as returning officer.

265. Electoral officers

- (1) The returning officer, in consultation with the Electoral Commissioner, may in writing appoint persons to act as electoral officers to assist in conducting the poll in an electoral area.
- (2) The returning officer, in consultation with the Electoral Commissioner, may appoint an electoral officer as electoral officer in charge of an issuing place.
- (3) If an electoral officer in charge is unable to perform any functions under this Part, the returning officer, in consultation with the Electoral Commissioner, may make any arrangement for a substitute to act as electoral officer in charge.
- (4) An electoral officer is a worker within the meaning and for the purposes of the Workers Rehabilitation and Compensation Act 1988 and the Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011 .

266. Powers of electoral officers in charge

- (1) An electoral officer in charge of an issuing place is to maintain and enforce order and to keep the peace at the issuing place.
- (2) The electoral officer in charge of an issuing place may remove a person whom the officer reasonably suspects has committed an offence under this Part.
- (3) Any police officer is to assist an electoral officer in charge of an issuing place in removing a person under subsection (2) .

267. Electoral officer voting

An electoral officer is not debarred from voting at an election by virtue of his or her office in relation to that election.

268. Expenses of elections

All expenses incurred by a returning officer and the Electoral Commissioner in respect of an election in a municipal area are to be paid by the council of that municipal area.

Division 4 - Notices of elections and nominations

268A. Closing day and polling period

(1) The day on which the poll closes for an election in any year in respect of all councils is the last Tuesday in October in the year unless the Governor, by an order made under this section or section 214E –

- (a) fixes another day in another month or year; or
- (b) determines that an election in respect of all or specified councils is to be postponed.

(1A) The Governor, by order, may –

- (a) fix any day in any month in any year as a closing day for an election in respect of one or more specified councils; or
- (b) determine that an election in respect of all or specified councils is to be postponed.

(1B) The Governor, if a notice of election has been issued and an election is being conducted, by order, may –

- (a) fix another closing day for that election; or
- (b) declare the election to be abandoned.

(2) The Electoral Commissioner may determine the hours of a polling period.

269. Notice of election

(1) On the 8th Saturday before closing day, the Electoral Commissioner is to cause notice of an election to be advertised prominently in a daily newspaper circulating in the relevant municipal area.

(2) A notice under subsection (1) is to state –

- (a) the date and time of the closure of the electoral roll of the electoral area to which the election relates; and
- (b) the vacancies to be filled; and
- (c) the details of entitlement to vote; and
- (d) any other matter the Electoral Commissioner considers appropriate.

(3) If more than one election is required for a municipal area or several municipal areas at the same time, the Electoral Commissioner may advertise a single notice in respect of all the elections.

(4) The returning officer is to display a copy of a notice of an election at the public office.

270. Eligibility for nomination as councillor

(1) A person is eligible to nominate as a candidate for the office of councillor in respect of a municipal area if the person–

- (a) is enrolled on an electoral roll in respect of the municipal area; and
- (ab) has his or her principal place of residence in Tasmania; and
- (b) is not a councillor of another council whose term of office is to end after the certificate of election is issued in respect of that other council's elections; and
- (c) has not been barred by a court under section 48(6) , 338A , 339 or 339A from nominating as a candidate at any election; and
- (d) is not an employee of the council in that municipal area; and
- (e) has not been removed from the office of councillor because of inadequacy or incompetency; and

- (f) is not a bankrupt; and
- (g) is not subject to an assessment order or treatment order under the Mental Health Act 2013 or an order under the Guardianship and Administration Act 1995 ; and
- (h) is not undergoing a term of imprisonment.

(2) A person is not eligible to nominate as a candidate for the office of councillor if the person has been sentenced for a crime but the sentence has not been executed.

(3) If a municipal area is divided into electoral districts, a candidate is not required to be enrolled on an electoral roll in respect of the particular electoral district for which the candidate is nominated.

(4) A person may not be a candidate for the office of councillor in more than one electoral district in a municipal area or in more than one municipal area.

271. Notice of nominations

(1) A person who is eligible to nominate as a candidate for the office of councillor in a municipal area may lodge at, or post or send by facsimile to, the returning officer –

- (a) a notice of nomination in an approved form; and
- (b) if the person's name has changed from that which appears on the electoral roll –
 - (i) evidence in writing of the change of name; and
 - (ii) a statement specifying the form in which the person's name is to appear on the ballot papers for the poll, if a poll is required to be conducted for that election.

(2) A notice of nomination is to be –

- (a) signed by at least 2 persons enrolled on an electoral roll for the municipal area; and
- (b) signed by the candidate; and
- (c) lodged, posted or sent by facsimile so as to be received by the returning officer before the end of the nomination period.

(3) The returning officer may accept a second notice of nomination up to 24 hours after the end of the nomination period if satisfied that the first notice –

- (a) needs to be altered, completed, corrected or substituted; and
- (b) was lodged, posted or sent by facsimile and received by the end of the nomination period.

272. Acceptance or rejection of nomination

(1) The returning officer is to consider a notice of nomination immediately on receipt of the nomination and may accept the nomination if satisfied that –

- (a) the notice has been fully completed; and
- (b) the name of the person is on the electoral roll for the municipal area; and
- (c) the name of that person is –
 - (i) normally used by that person; and
 - (ii) not obscene, frivolous or assumed for an ulterior purpose.

(2) If the returning officer is not satisfied as to the matters specified in subsection (1) , the returning officer is to reject that nomination.

(3) The returning officer is to advise a person whether a nomination is accepted or rejected immediately on making the decision.

(4) A person may appeal to the Tasmanian Electoral Commission against the rejection of a nomination no later than 24 hours after the end of the nomination period.

(5) In considering an appeal, the Tasmanian Electoral Commission may—

- (a) direct the returning officer to accept the nomination; or
- (b) confirm the rejection of the nomination.

(6) A decision of the Tasmanian Electoral Commission is final.

273. Withdrawal of nomination or death of candidate

(1) A candidate may withdraw his or her nomination for an election by lodging, posting or sending by facsimile a notice in an approved form to be received by the returning officer before the end of the nomination period.

(2) If a candidate dies before the end of the nomination period—

- (a) the candidate is not capable of being elected at the election; and
- (b) the returning officer, with the approval of the Electoral Commissioner, may extend the nomination period for no longer than 24 hours.

(2A) If a candidate for the office of mayor or deputy mayor dies between the end of the nomination period for an election and the end of the polling period, the Electoral Commissioner is to —

- (a) declare that election to be abandoned; and
- (b) fix another day as the closing day for a new election in respect of that office.

(3) If, on the death of a candidate for the office of councillor between the end of the nomination period and the end of the polling period, the number of candidates remaining exceeds the number required to be elected—

- (a) the returning officer is to publicize the death; and
- (b) a poll is to be conducted under Division 6 ; and
- (c) the votes cast for the deceased candidate on the ballot papers are to be counted as votes cast for the candidate shown as the elector's next preference on the ballot papers.

(4) If, on the death of a candidate for the office of councillor between the end of the nomination period and the end of the polling period, the number of candidates remaining does not exceed the number required to be elected—

- (a) those candidates are to be declared to be elected; and
- (b) the returning officer is to proceed in the manner specified in section 274(2) .

(5) If a candidate dies after the end of the polling period and before the declaration of the poll the returning officer is to conduct or continue to conduct a count of the votes as if the candidate had not died.

(6) If a candidate referred to in subsection (5) received sufficient votes to be elected, the position the candidate would have been elected to is to be treated as if it were a casual vacancy.

(7) If a candidate referred to in subsection (5) did not receive sufficient votes to be elected, the successful candidates are to be declared elected.

274. Election without poll

(1) If, at the end of the nomination period, the number of candidates for an office whose nominations have been accepted and not withdrawn does not exceed the number required to be elected, those candidates are duly elected.

(2) If candidates are duly elected, the returning officer —

- (a) as soon as practicable, is to make a declaration of the poll; and
- (b) is to give a certificate of election on or after closing day; and
- (c) is to advise the Electoral Commissioner of the candidates duly elected.

(3) If the number of candidates for an office whose nominations have been accepted and not withdrawn is less than the number required to be elected –

- (a) the Electoral Commissioner may call for new nominations for the unfilled vacancies; and
- (b) the period during which the new nominations may be made ends at noon on the 5th Monday immediately before the closing day.
- (c)

275. Election with poll

- (1) If, at the end of the nomination period, the number of candidates exceeds the number required to be elected, a poll is to be conducted under Division 6 .
- (2) If a poll is required, the returning officer as soon as practicable is to advise the Electoral Commissioner accordingly.
- (3) The Electoral Commissioner is to cause a notice to be advertised in a daily newspaper circulating in the relevant electoral area and displayed at all public offices stating–
 - (a) the names, and localities of the residences, of the candidates; and
 - (b) the offices to be voted for; and
 - (c) the polling period; and
 - (d) the addresses of issuing places and the hours during which they are open; and
 - (e) any other matter the Electoral Commissioner considers appropriate.
- (4) If more than one election is required for a municipal area or several municipal areas at the same time, the Electoral Commissioner may advertise a single notice in respect of all the elections.

276. Display of notice of nominations

- (1) As soon as possible after 12 noon on the day after the end of the nomination period, the returning officer is to–
 - (a) display at the public office a notice specifying the name, and address if not deleted or excluded from the electoral rolls under section 258 , of each person whose nomination for the election has been accepted; and
 - (b) promptly advise the Electoral Commissioner of those details.
- (2) The returning officer is not to disclose any information of any nomination until after the end of the nomination period.

Division 5 - Advertising in respect of elections

277.

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278. Electoral advertising

(1) A person must not, during the relevant period, use, otherwise than in accordance with the regulations, electoral advertising with a view to promoting or procuring the election of any candidate at an election.

Penalty: Fine not exceeding 100 penalty units.

(2) If a court convicts under this section a candidate who is successful at an election, the court must declare that candidate's election void, unless the court is satisfied that there are special circumstances that make it undesirable or inappropriate for it to make such a declaration.

(3) A person, within the relevant period, must not print, publish or distribute any electoral advertising that contains the name, photograph or a likeness of a candidate or intending candidate at an election without the written consent of the candidate or intending candidate.

Penalty: Fine not exceeding 50 penalty units.

(4) Subsection (3) does not apply to –

(a) any matter printed, published or distributed by or on behalf of the Electoral Commissioner in the exercise or performance of his or her powers and functions; or

(b) any electoral advertising by means of any broadcast by radio or television or by a repeat on the internet of any such broadcast.

(5) A person, within the relevant period, must not print, publish, keep on display, broadcast or distribute any electoral advertising that refers to the offering, promising or giving by a candidate or intending candidate of a gift, donation or prize to or for any specific club, association or body or to or for clubs, associations or bodies generally.

Penalty: Fine not exceeding 50 penalty units.

(6) A person must not use or display the arms of a council, or a logo of a council, in any electoral advertising.

Penalty: Fine not exceeding 20 penalty units.

(7) Subsection (6) does not apply to –

(a) any matter printed, published or distributed by or on behalf of the Electoral Commissioner in the exercise or performance of his or her powers or functions; or

(b) any electoral advertising by means of any broadcast by television.

279. Return in relation to electoral advertising

(1) Within 45 days after the day on which the returning officer gives a certificate of election, every candidate must sign and declare before a justice or a commissioner for declarations and lodge with the Electoral Commissioner a return in an approved form stating the candidate's relevant electoral advertising.

Penalty: Fine not exceeding 30 penalty units.

(2) A return under subsection (1) is to be accompanied by any invoice, account or receipt in respect of electoral advertising.

(3) Any person who prints, publishes or broadcasts electoral advertising is to lodge a return in an approved form with the Electoral Commissioner within 45 days after the day on which the returning officer gives a certificate of election.

Penalty: Fine not exceeding 30 penalty units.

280. Further information

If the Electoral Commissioner is not satisfied that the return is authentic and accurate and that all particulars that ought to have been included in the return have been included, the Electoral Commissioner may require any person to give further information.

281. Returns open for inspection

(1) The Electoral Commissioner is to give a copy of any return to the general manager.

(2) The Electoral Commissioner and the general manager are to–

(a) keep returns or copies of returns for a period of 12 months; and

(b) during that period, make those returns or copies available for inspection, free of charge, by a member of the public.

(3) At the end of 12 months, the Electoral Commissioner and the general manager are to destroy the returns or copies unless proceedings have been instituted concerning the relevant election.

282. Electoral Commissioner may require information

(1) If the Electoral Commissioner has reason to believe that a person is in possession of information or records relating to electoral advertising, the Electoral Commissioner may, by written notice, require—

(a) the person to provide that information; or

(b) the person to produce for inspection any of those records, at a specified time and place; or

(c) the person to answer any question relating to that advertising; or

(d) any person who was a party to the compilation of those records to make a statement providing an explanation of them.

(2) The Electoral Commissioner may make and retain copies of any records produced or of any parts of those records.

(3) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1)

Penalty: Fine not exceeding 10 penalty units.

(4) Any information provided, answer given or statement made by a person in response to a requirement made under subsection (1) may not be used in any proceedings against that person except proceedings under subsection (6) in relation to that information, answer or statement.

(5) A person is not obliged to provide any information, produce records, answer a question or make a statement under this section unless that person has first been informed by the Electoral Commissioner that he or she is required to do so.

(6) A person must not provide information, produce records, give an answer or make a statement which is, to that person's knowledge, false or misleading.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months.

(7) In any proceedings for an offence under this section, a copy of a record or part of a record made under subsection (2) is admissible in evidence in those proceedings and, in the absence of evidence to the contrary, the contents of the copy are presumed to be the same as those on the original record or part.

(8) In this section *records* includes books, accounts, minutes, registers, deeds, writings or documents and any other sources of information compiled, recorded or stored in written form, on micro-film or by electronic process, or in any other manner or by any other means.

Division 6 - Postal voting

283. Voting

Voting is to be carried out during the polling period in accordance with this Division.

284. Ballot material

(1) The Electoral Commissioner is to send or deliver during the polling period to each elector, to the address shown on the list of electors, the following:

(a) ballot material;

(b) any other document the Electoral Commissioner considers appropriate.

(2) Any envelopes used for the issue or return of ballot papers are to —

- (a) be approved; and
 - (b) make provision on one of those envelopes for the voter to sign a declaration; and
 - (c) be designed to protect the secrecy of the vote.
- (3) A declaration under subsection (2) is to state that the voter –
- (a) is the person named on the envelope; and
 - (b) voted on the ballot paper in the envelope.
- (4) Statements of candidates are to be –
- (a) in accordance with any approved requirements; and
 - (b) printed in an approved format.
- (5) The Tasmanian Electoral Commission may display, on a website, the statements of the candidates for an election.

285. Voting procedure

The elector, in accordance with the instructions, is to –

- (a) mark the ballot paper; and
- (b) place it in the envelope or envelopes provided; and
- (c) sign the declaration; and
- (d) send it by post or deliver it so that it is received before the end of the polling period by –
 - (i) the returning officer; or
 - (ii) the electoral officer in charge of an issuing place.

286. Supplementary issue of ballot material

(1) The Electoral Commissioner, the returning officer or an electoral officer in charge of an issuing place, if there is reasonable time to do so, is to send or deliver, or provide in person, supplementary ballot material in respect of an electoral area to a person if satisfied that the person–

- (a) is an elector in respect of the electoral area and has not received the original documents; or
- (b) is an elector in respect of the electoral area and has spoiled any of the original ballot material sent to him or her; or
- (c) claims to be entitled under section 254(1), (2) or (3) to be enrolled on the electoral roll in respect of the electoral area; or
- (d) is to be absent from the address shown on the list of electors for part or all of the polling period.

(2) Supplementary ballot material is to be sent or delivered to the address shown on the list of electors unless a person referred to in subsection (1)(c) or (d) nominates another address.

(3) A record is to be kept in an approved form of –

- (a) the name and address of a person issued with supplementary ballot material; and
- (b) the reason for that issue.

286A. When ballot paper sent as supplementary election material may be accepted

A ballot paper issued to a person in accordance with section 286(1)(c) in respect of an electoral area may be accepted if –

- (a) the person's name has been omitted in error from the list of electors in respect of that electoral area; or
- (b) the person's name has been omitted in error from an electoral roll kept under section 258(1); or

(c) the person's name has been on the electoral roll for the House of Assembly in respect of an address within the municipal area at any time since the closure of that roll for the most recent ordinary election under this Act for the electoral area and the person appears to have continuously resided in the municipal area since that closure.

287. Ballot papers not to be accepted

A ballot paper is not to be accepted if it is –

- (a) received by the returning officer or the electoral officer in charge of an issuing place after the end of the polling period; or
- (b) contained in an envelope on which the declaration has not been signed as required under section 285 ; or
- (c) not contained in an envelope; or
- (d) received from a person who is not entitled to vote.

288. Ballot papers

- (1) Ballot papers are to be prepared and printed by the Electoral Commissioner in the format specified in Schedule 6 .
- (2) The names of the candidates for the office of councillor, mayor or deputy mayor are to be printed on each batch of ballot papers in the prescribed order.
- (3)

289. Instructions on ballot papers

Instructions on the ballot paper are to state that –

- (a) the elector is to mark the ballot paper by numbering the boxes from 1 to the number of candidates in order of choice; and
- (b) the elector's vote will not count unless the elector numbers at least the same number of boxes as there are candidates to be elected.

290. Marking of ballot papers

- (1) In respect of an election for mayor, deputy mayor or a single councillor, an elector –
 - (a) must mark the ballot paper by placing the number 1 in the box next to the name of the candidate of the elector's first preference; and
 - (b) may mark the ballot paper further by placing further consecutive numbers in any or all of the remaining boxes next to the names of the remaining candidates.
- (2) In respect of an election for more than one councillor, an elector –
 - (a) must mark the ballot paper by placing consecutive numbers in the boxes next to the names of the candidates in order of preference from number 1 to the number of candidates that are to be elected; and
 - (b) may place further consecutive numbers in any or all of the remaining boxes next to the names of the remaining candidates.

291. Assistance to electors

The Electoral Commissioner may approve any procedures that are reasonable and appropriate to assist an elector whose sight is so impaired or who is so physically incapacitated or illiterate that the elector is unable to vote without assistance.

292. Appointment of scrutineers

- (1) A candidate at an election may appoint one or more persons who are not candidates at that election to be scrutineers on his or her behalf.

- (2) The appointment of a scrutineer is to be –
 - (a) in an approved form; and
 - (b) signed by the candidate and the scrutineer.

293. Presence of scrutineers

- (1) A scrutineer is entitled to be present at any place where ballot material is sorted, checked or counted.
- (2) The returning officer is to determine the number of scrutineers that may be present on behalf of a candidate at a place referred to in subsection (1) .
- (3) A scrutineer, before acting as such, is to produce to an electoral officer his or her appointment as a scrutineer.
- (4) An electoral officer is to supply a scrutineer with an identity badge to be worn or displayed by the scrutineer while scrutineering.

294. Scrutineering

- (1) A scrutineer may bring to the attention of an electoral officer any matter the scrutineer believes may be out of order.
- (2) A scrutineer must not –
 - (a) fail to comply with a reasonable direction given to the scrutineer by an electoral officer; or
 - (b) interfere with, or attempt to influence, an elector or other person; or
 - (c) communicate with a person except if necessary to do so while scrutineering; or
 - (d) without the authority of the electoral officer, touch or interfere with any ballot material; or
 - (e) otherwise misconduct himself or herself.

Penalty: Fine not exceeding 5 penalty units.

295. Persons entitled to be present at place

The only persons who are entitled to be present at any place where ballot material is sorted, checked or counted are –

- (a) the electoral officers appointed for that place; and
- (b) scrutineers; and
- (c) any other person authorised by the Electoral Commissioner, the returning officer or an electoral officer.

296. Procedures for voting by persons outside Tasmania

- (1) The Tasmanian Electoral Commission, for the purposes of this section, may approve procedures to enable approved electors to vote in accordance with this section.
- (2) An electronic copy of a ballot paper, and an electronic copy of a declaration document, in respect of an election may be obtained by an approved elector in accordance with the approved procedures.
- (3) An approved elector may vote in an election by sending –
 - (a) by an electronic means specified in the approved procedures, completed electronic copies of each of the downloaded documents; or
 - (b) by mail, completed paper copies of each of the downloaded documents –

so that the completed electronic copies or completed paper copies are received by the relevant person before the end of the polling period in respect of the election.

(4) If completed electronic copies, or completed paper copies, of the downloaded documents, that are sent by an approved elector are received by the relevant person before the end of the polling period in respect of the election in accordance with subsection (3) –

(a) a person approved by the Electoral Commissioner is to transcribe onto a ballot paper the voting indicated on the completed electronic copy, or completed paper copy, of the electronic ballot paper; and

(b) the ballot paper on which the voting is transcribed under paragraph (a) is to be dealt with as a ballot paper received by post; and

(c) a person approved by the Electoral Commissioner is to print a paper copy of the completed electronic copy of the electronic declaration document; and

(d) the paper copy, of the completed electronic copy of the electronic declaration document, that is sent by mail under subsection (3)(b) or printed under paragraph (c) is to be taken to be a declaration by the approved elector that is signed on an envelope as required under section 285 .

(5) An electronic record is to be made of the persons and the electronic address from whom or which completed electronic copies or completed paper copies were received in accordance with subsection (3) .

(6) An electronic record kept under subsection (5) in respect of an election is to be kept until the election can no longer be questioned.

(7) A person does not commit an offence against a provision of this Part in relation to an action taken by the person if the action is taken in good faith for the purposes of this section or the approved procedures.

(8) In this section –

approved elector means a person who is –

(a) an elector in respect of an electoral area; and

(b) outside Tasmania; and

(c) a member of a class of electors to which the approved procedures apply;

approved procedures means procedures approved for the purposes of this section;

completed electronic copy, in relation to a downloaded document, means an electronic copy of the downloaded document that is completed by the person in accordance with the instructions on the downloaded document;

completed paper copy, in relation to a downloaded document, means a paper copy of the downloaded document that is completed by the person in accordance with the instructions on the downloaded document;

declaration document means an electronic document, to be completed by a person, stating that the person is the person who received ballot material electronically and is voting using procedures approved under this section;

downloaded documents means an electronic copy of a ballot paper, and an electronic copy of a declaration document, that are obtained under subsection (2) ;

electronic ballot paper means an electronic copy of a ballot paper obtained under subsection (2) ;

electronic declaration document means an electronic copy of a declaration document obtained under subsection (2) ;

relevant person means –

(a) the returning officer; or

(b) the electoral officer in charge of an issuing place.

Division 7 -

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298.

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Division 8 - Determination of result of elections

299. Counting votes

- (1) At the end of the polling period, the electoral officer in charge of an issuing place is to –
 - (a) seal any ballot box at the issuing place; and
 - (b) deliver any ballot box as directed by the returning officer.
- (2) The counting of votes is to be carried out by the returning officer in accordance with –
 - (a) Part 2 of Schedule 7 , if the ballot paper set out in Part 1 of Schedule 6 is used; or
 - (b) Part 3 of Schedule 7 , if the ballot paper set out in Part 2 of Schedule 6 is used.

300. Informal ballot papers

- (1) A ballot paper is informal if –
 - (a) it is not authenticated by at least one of the following:
 - (i) the initials of the electoral officer who issues the ballot papers; or
 - (ii) the signature of that electoral officer; or
 - (iii) an approved mark; or
 - (b) there is no vote recorded on the ballot paper; or
 - (c) the vote is recorded on the ballot paper otherwise than in accordance with section 290 ; or
 - (d) there is on the ballot paper a mark or writing which identifies the elector who marked that ballot paper.
- (2) A ballot paper is not to be treated as informal or rejected at the counting of votes if, in the opinion of the returning officer or electoral officer in charge, the elector's intention is clearly indicated on the ballot paper.

301.

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303. Declaration of poll

- (1) As soon as practicable after all the votes are counted, the returning officer is to –
 - (a) declare the names of the persons elected at an election; and
 - (b) issue a certificate of the result of the election.
- (2) If elections of councillors, mayor and deputy mayor are held at the same time, the order in which the returning officer is to declare the names of the persons elected is as follows:
 - (a) councillor;
 - (b) mayor;
 - (c) deputy mayor.

304. Certificate of election

- (1) The returning officer is to forward to the Electoral Commissioner the certificate of the result of the election.
- (2) The Electoral Commissioner is to cause a copy of the certificate of election to be published in a daily newspaper circulating generally in the relevant electoral area.
- (3) Any elector or candidate may dispute the result of an election by lodging an application with the Supreme Court within 90 days of the date on which the certificate of election is published under subsection (2) .
- (4) A dispute is to be heard and determined in the prescribed manner.

305. Recount of votes

- (1) A candidate at the election may, before the declaration of a poll, request a recount of the votes cast at the election.
- (2) The returning officer may –
 - (a) agree to recount the votes; or
 - (b) refuse to recount the votes.
- (3) If the returning officer refuses to recount the votes, the candidate may appeal to the Tasmanian Electoral Commission.
- (4) The Tasmanian Electoral Commission may direct the returning officer to recount the votes.
- (5) A recount under this section of the votes at an election is conclusive of the results of the counting of the votes at that election and no further request for a recount of those votes may be made.

306. Keeping of electoral material

- (1) The returning officer is to parcel and seal all electoral material in an approved manner.
- (2) The returning officer is to give in the approved manner to the Electoral Commissioner–
 - (a) all used ballot papers; and
 - (b) any other sealed parcels of electoral material or other material the Electoral Commissioner may require.
- (3)
- (4)
- (5) The Electoral Commissioner is to keep all used ballot papers in respect of councillors until the certificate of election is issued for the next ordinary election for those councillors and other electoral material until at least any dispute may be determined.
- (6) Ballot papers are only to be examined for the purpose of filling a vacancy or another purpose approved by the Electoral Commissioner.
- (7)

Division 9 - Casual vacancies

307. Casual vacancies

- (1) A casual vacancy in the office of a councillor is to be filled by a recount, carried out under Schedule 8 , of the ballot papers of the election at which the councillor causing the vacancy was elected.
- (2) For the purpose of a recount, only the ballot papers containing the votes of the vacating councillor are to be counted for candidates who remain eligible and who consent to be included when the recount is carried out.
- (3) The Electoral Commissioner is not to carry out a recount if a vacancy occurs during the period commencing 6 months before, and ending on the Thursday before, the day on which the notice of election for a forthcoming election is to be given.

(3A) The Electoral Commissioner is to carry out a recount if a vacancy occurs during the period referred to in subsection (3) if the number of remaining councillors of a council is not sufficient to constitute a quorum.

(3B)

(4) The Electoral Commissioner is to notify that a recount to fill a casual vacancy is to take place by–

(a) notice in writing sent or delivered to each eligible candidate; or

(b) an advertisement published in a daily newspaper circulating in the relevant municipal area.

(5) An eligible candidate who wishes to be included in a recount must consent in the approved form by lodging the form with the Electoral Commissioner by noon on the 8th day after the date of a notice or advertisement referred to in subsection (4) .

(6) The term of office of a councillor elected by means of a recount ends on the date of issue of the certificate of election for the next ordinary election.

(7) The Electoral Commissioner must not disclose to a person the results, of a recount in respect of a hypothetical casual vacancy, that may be obtained by performing an electronic calculation based on any electronic records of ballot papers, completed by electors or former electors, that are held in an electronic form by the Electoral Commissioner.

308. By-elections

(1) A by-election for a vacancy in the office of councillor is to be held if –

(a) it is not possible to carry out a recount of votes; or

(ab)

(ac)

(ad)

(b) not all the offices have been filled at an election.

(1AA) A by-election is not to be held during the period specified in section 307(3) .

(1A) The Electoral Commissioner may fix a day as the closing day for a by-election.

(2)

(3) Except as provided in subsection (3A) , a by-election is to be held in accordance with this Part as if it were an election.

(3A) The Electoral Commissioner, in consultation with the relevant general manager in relation to a by-election, may determine –

(a) the day on which notice of the by-election is to be given; and

(b) the nomination period; and

(c) the closure of electoral rolls.

(4) A vacancy in the office of mayor is to be filled by a by-election held in accordance with subsections (1A) , (3) and (3A) .

(5) The deputy mayor is eligible to nominate at a by-election as a candidate for the office of mayor without having to resign the office of deputy mayor and, if so elected, ceases to hold the office of deputy mayor.

(6) If a mayor vacates office as both mayor and councillor, the vacancy in the office of councillor is to be filled by a by-election held concurrently with the by-election for the office of mayor.

(7) The term of office of a councillor or mayor at a by-election to fill a casual vacancy is the remainder of the term of office of the councillor or mayor who caused the vacancy.

309.

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310. Adjournment of poll

- (1) The Tasmanian Electoral Commission may adjourn a poll for a period not exceeding 30 days if satisfied that it is necessary to ensure the proper conduct of the poll.
- (2) The Tasmanian Electoral Commission, by public notice, is to specify –
 - (a) the period of the adjournment; and
 - (b) the reasons for the adjournment.
- (3)

Division 10 - Offences relating to elections

311. Electoral articles to be signed

(1) A person must not, during the prescribed period, print, publish, keep on display or distribute an article relating to an election that does not contain the true name and address of the responsible person at the end of the article.

Penalty: Fine not exceeding 5 penalty units.

(1A) An article is published or kept on display by a person if the publication or display is published or kept on display with that person's consent.

- (2) This section does not apply to the printing or publication of –
 - (a) a leading article; or
 - (b) an article that consists solely of a report of a meeting and does not contain any comment (other than comment made by a speaker at the meeting) on a candidate at an election or on the issues being submitted to the electors at the election.

(3)

(4) In this section –

address means an address, other than a post office box or an electronic address –

- (a) at which the responsible person resides; or
- (b) at or through which the responsible person may be readily contacted;

article includes any advertisement, direct mail item, sign, circular, pamphlet, handbill, poster, sticker, dodger and report;

prescribed period means the period commencing on the day on which the notice of election is advertised and ending on the closing day;

responsible person means the person taking responsibility for causing the matter to be printed or published.

312. Offences related to polling

- (1) A person must not –
 - (a) vote at an election if not entitled to do so; or
 - (b) obtain or attempt to obtain more ballot papers at an election than that to which he or she is entitled.
 - (c)
 - (d)
 - (e)

Penalty: Fine not exceeding 5 penalty units.

(2) A person is not –

- (a) to obstruct an elector when the elector is marking a ballot paper; or
- (b) by any word or action, to directly or indirectly aid in discovering the name of a person for whom an elector has voted or intends to vote.

Penalty: Fine not exceeding 10 penalty units.

(3) A person must not –

- (a) personate or attempt to personate any elector; or
- (b) vote, offer to vote or attempt to vote more than once in his or her own right at the same election; or
- (c) attempt to vote by means of a ballot paper that has been handed or delivered to another person; or
- (d) personally attempt to induce an elector within the elector's residence during the polling period to vote or not to vote for a particular person; or
- (e)
- (f) steal, misdirect, hide, destroy or otherwise tamper or interfere with any of the documents sent or delivered under section 284 or 286 .
- (g)
- (h)
- (i)
- (j)
- (k)

Penalty: Fine not exceeding 50 penalty units.

313. Offences in violation of secrecy of ballot

A person must not –

- (a) at an election, attempt to find out, or directly or indirectly aid in finding out, the person for whom a vote is given; or
- (b) disclose any knowledge of the person for whom an elector has voted at an election that he or she has obtained in the exercise of his or her office at that election.

Penalty: Fine not exceeding 10 penalty units.

314. Bribery and undue influence

(1) A person must not –

- (a) promise or offer any money or valuable consideration, advantage, recompense, reward or benefit in relation to –
 - (i) a nomination for an election; or
 - (ii) a withdrawal of nomination from an election; or
 - (iii) a vote or an abstention from voting at a poll; or
 - (iv) support of, or opposition to, a candidate; or
 - (v) a promise of any such vote, abstention, support or opposition; or

(b) give or take any money or valuable consideration, advantage, recompense, reward or benefit in relation to a nomination, withdrawal, vote, abstention, support, opposition or promise.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months.

(2) A person who instigates the commission of an offence under this section is punishable in the same manner as if that person had committed the offence.

(3) An offence under this section includes the supply of food, drink or entertainment with a view to influencing the vote of an elector at an election if the supply is made during the relevant period.

(4) A candidate or intending candidate must not directly or indirectly offer, promise or give a gift, donation or prize to or for any specific club, association or body or to or for clubs, associations or bodies generally during the relevant period.

Penalty: Fine not exceeding 5 penalty units.

(5) In proceedings for an offence under subsection (4), it is a defence for the person charged to show that gifts, donations or prizes similar in nature and in amount or value are regularly given by that person to the specific club, association or body.

(6) A person must not directly or indirectly threaten, offer, suggest, use, cause, inflict or instigate violence, punishment, damage, loss or disadvantage to another person in relation to –

- (a) a nomination for an election; or
- (b) a withdrawal of a nomination from an election; or
- (c) a vote, or any abstention from voting at a poll; or
- (d) support of, or opposition to, a candidate; or
- (e) a promise of any such vote, abstention, support or opposition.

Penalty: Fine not exceeding 10 penalty units.

(7) A declaration of public policy or promise of public action is not an offence against subsection (6).

315. False or misleading statements

A person must not, in giving any information, making a notice of nomination under section 271, filing a return or making an application under this Part–

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is misleading.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months.

Division 11 - Miscellaneous

316. Formal defects not to invalidate elections

An election is not invalid by reason only –

- (a) of any defect in the title, or want of title, of the person by or before whom the election, or any polling in it, has been held or conducted; or
- (b) of any formal error or defect in any notice, advertisement, notification, list, declaration, application, statement or envelope, or in any publication of any of them; or
- (c) that any such publication was out of time; or
- (d) of any delay in holding the election; or
- (e) the failure to provide any electoral material; or

(f) of any defect, impediment or omission of a merely formal nature.

317. Orders in respect of elections

The Minister, by order and on the recommendation of the Electoral Commissioner, may—

- (a) provide for such matters as the Minister considers desirable to enable a particular election or elections at a particular time, to be held; or
- (b) validate a defect or an informality in an election or an irregularity in the holding of an election that appears to the Minister not to affect materially the result of the election.

318. Invalidity of election not to affect proceedings

The invalidity of an election or a court's declaration that a candidate's election is void does not affect —

- (a) any action or other proceedings by or against the council; or
- (b) any decision made by the council or council committee.

319. Instituting proceedings

- (1) The returning officer is to report all alleged offences under this Part to the Electoral Commissioner.
- (2) The Electoral Commissioner is to determine whether or not proceedings are to be instituted in respect of any offence under this Part.

320. Inquiries and investigations

- (1) The Electoral Commissioner, or a person authorized by the Electoral Commissioner for the purpose, may make any inquiries or carry out any investigation necessary to ensure that an election is being, or has been, conducted in accordance with this Part.
- (2) In making inquiries or carrying out any investigation under subsection (1), the Electoral Commissioner or authorized person may—
 - (a) enter any issuing place or place where electoral material is stored; and
 - (b) examine, make copies of and take possession of, records and any electoral material; and
 - (c) question any electoral officer, candidate or candidate's election agent in relation to the conduct of the election; and
 - (d) question the general manager in relation to the keeping of the electoral roll.

321. Declaration of office

- (1) Any person elected as councillor must make a prescribed declaration in a prescribed manner.
- (2) A person elected as a councillor who has not made a declaration must not—
 - (a) act in the office of councillor, mayor or deputy mayor; or
 - (b) take part in the proceedings of any meeting of the council or a committee.
- (3) A council is to acknowledge the making of a declaration at its meeting and the general manager is to record that fact in the minutes of that meeting.

321A. Vacancy of office on failure to make declaration

The office of a councillor becomes vacant if the councillor fails to make the prescribed declaration within 60 days of the issue of the certificate of election for the election at which the councillor was elected.

322. Right of Information

The provisions of the Right to Information Act 2009 do not apply to any electoral material.

323. Role of Electoral Commissioner

- (1) The Electoral Commissioner may–
 - (a) require any person to provide information or advice in relation to any matter arising under this Part;
and
 - (b) use that information and advice for the purposes of this Part.
- (2) The Electoral Commissioner may–
 - (a) prepare and publish information and statistics in respect of elections; and
 - (b) promote public awareness and understanding of elections; and
 - (c) encourage enrolment and voting for elections.

324.

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PART 16 - Miscellaneous

Division 1 - Local Government Association of Tasmania

325. Interpretation of Division 1

In this Division –

Association means the Local Government Association of Tasmania continued under section 326 ;

member council means a council which is a member of the Local Government Association of Tasmania.

326. Local Government Association of Tasmania

- (1) The Local Government Association of Tasmania is continued as a body corporate with perpetual succession and a common seal.
- (2) The common seal is to be kept and used as authorized by the Association.
- (3) The Association may –
 - (a) acquire, hold, dispose of and otherwise deal with property; and
 - (b) sue and be sued in its corporate name.
- (4) The execution of a document sealed by the Association is to be attested by 2 officers of the Association.
- (5) All courts and persons acting judicially must take judicial notice of the imprint of the common seal on a document and presume that it was duly sealed by the Association.

327. Members of Association

- (1) The Association consists of any council which agrees to become a member and pays the annual subscription as determined by the Association.
- (2) The Association may refuse to renew the membership of a council which –
 - (a) has not paid the due subscription; or
 - (b) fails to comply with, or contravenes, any rules of the Association.

328. Functions and powers of Association

- (1) The functions of the Association are as follows:
 - (a) to protect and represent the interests and rights of councils in Tasmania;
 - (b) to promote an efficient and effective system of local government in Tasmania;
 - (c) to provide services to member councils, councillors and employees of councils.
- (2) The Association has power to do any thing necessary or convenient to be done in connection with the performance of its functions.

329. Rules

The Association may make rules relating to –

- (a) the management of the Association; and
- (b) the appointment of a general management committee; and
- (c) the membership of the Association; and
- (d) any other matter relating to any of its powers or functions under this Division or Division 1A of this Part.

330. Employees of Association

The Association may appoint and employ such persons and on such terms and conditions as it considers necessary to perform its functions under this Division or Division 1A of this Part.

331.

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Division 1A - Employee assurance schemes

331A. Interpretation of Division 1A

In this Division –

Association means the Local Government Association of Tasmania;

Committee means the General Management Committee of the Association;

Commonwealth superannuation law means the following Acts of the Commonwealth:

- (a) Superannuation Industry (Supervision) Act 1993 ;
- (b) Income Tax Assessment Act 1936 ;
- (c) Superannuation Entities Taxation Act 1987 ;
- (d) Superannuation (Resolution of Complaints) Act 1993 ;

existing scheme means a scheme of assurance referred to in section 331B ;

member means a person admitted to membership of an existing scheme or new scheme;

new scheme means a scheme of assurance established under section 331C .

331B. Existing scheme

- (1) A scheme of assurance operating and in force under Division 2 of Part 7 of the Local Government (Building and Miscellaneous Provisions) Act 1993 immediately before the commencement of the Local Government Amendment Act 1995 continues as the existing scheme under this Division.
- (2) Any right, benefit, entitlement, liability or obligation of any members of the existing scheme and their employers continues.

331C. New scheme

- (1) The Committee may establish a new scheme of assurance and appoint trustees for that scheme under Commonwealth superannuation law in addition to, or in substitution for, an existing scheme.
- (2) If the Committee establishes a new scheme, a member participating in the existing scheme may stay in the existing scheme or transfer to the new scheme.

331D. Management of schemes

Any new scheme or existing scheme is to be managed in accordance with a trust deed executed under Commonwealth superannuation law.

331E.

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Division 2 - Queen Victoria Museum and Art Gallery

332. Endowment

- (1) By way of permanent endowment for the Queen Victoria Museum and Art Gallery, there is to be paid out of money provided by Parliament to the Launceston City Council in each year an amount to be used by the Launceston City Council towards –

- (a) the salaries of persons employed by the Launceston City Council in relation to the Queen Victoria Museum and Art Gallery; and
- (b) the maintenance, management and other charges in respect of the Queen Victoria Museum and Art Gallery; and
- (c) obtaining specimens of natural history, goods, chattels, paintings and works of art for the Queen Victoria Museum and Art Gallery.

(2) The Launceston City Council may supplement that fund in each year as it thinks fit.

333. Management

- (1) The Launceston City Council has the management and control of the Queen Victoria Museum and Art Gallery and its contents and may sell and exchange the contents and generally act in such manner as appears best calculated to advance the objects of the institution.
- (2) The Launceston City Council, once in every year, is to report the proceedings and progress of the institution to the Minister responsible for the administration of the Tasmanian Museum and Art Gallery Act 2017 , and a copy of every report is to be laid before Parliament within 14 sitting days after it is received.

Division 2A - Tenders and contracts for goods and services

333A. Tenders

- (1) A council must invite tenders for any contract it intends to enter into for the supply or provision of goods or services valued at or above the prescribed amount.
- (2) Tenders must be invited and made in a prescribed manner.
- (3) Subsection (1) does not apply to prescribed situations or prescribed contracts.

333B. Code for tenders and contracts

- (1) A council must adopt a code relating to tenders and contracts under this Division by 1 January 2006.
- (2) The code must –
 - (a) be consistent with this Act; and
 - (b) include any prescribed matter; and
 - (c) promote any prescribed principles; and
 - (d) be reviewed at least once every 4 years.
- (3) A council must comply with its code.
- (4) The general manager is to make a copy of the council's code and any amendments to the code available –
 - (a) for public inspection at the public office during ordinary office hours; and
 - (b) for purchase at a reasonable charge; and
 - (c) on its internet site free of charge.

Division 3 - General provisions

334. Director of Local Government

The Governor may appoint a State Service officer or State Service employee to be Director of Local Government and that officer or employee may hold the office of Director of Local Government in conjunction with State Service employment.

335. Functions and powers of Director

- (1) The Director has the following functions:

(a) to undertake the general administration of this Act subject to the direction of the Minister;

(b) to undertake any other function the Minister may determine.

(2) The Director has power to do anything necessary or convenient to perform any function under this or any other Act.

336. Council arms

(1) A council may adopt arms in the form of a badge, crest or flag or a combination of these.

(2) A council may display and use the arms in any manner it thinks fit.

(3) A person must not use or display the arms of a council without its approval.

Penalty: Fine not exceeding 10 penalty units.

336A. Public Office

The general manager, by notice in the *Gazette*, is to state the address and location of the council's public office.

337. Council land information certificate

(1) A person may apply in writing to the general manager for a certificate in respect of information relating to land specified and clearly identified in the application.

(2) The general manager, on receipt of an application made in accordance with subsection (1), is to issue a certificate in the prescribed form with answers to prescribed questions that are attached to the certificate.

(3) A certificate under subsection (2) relates only to information that the council has on record as at the date of issue of the certificate.

(4) A prescribed fee is payable in respect of the issue of a certificate.

(5) The general manager, on request, may provide in or with the certificate any other information or document relating to the land that the general manager considers relevant.

(6) A council does not incur any liability in respect of any information provided in good faith from sources external to the council.

(7) A person, with the consent of the occupier or owner of specified land, may request in writing to the general manager that an inspection be carried out of that land to obtain supplementary information relevant to that land.

(8) If the general manager agrees to a request under subsection (5) or (7), the general manager may impose any reasonable charges and costs incurred.

(9) In this section –

land includes –

(a) any buildings and other structures permanently fixed to land; and

(b) land covered with water; and

(c) water covering land; and

(d) any estate, interest, easement, privilege or right in or over land.

338. Information

A council is to furnish to the Minister, the Treasurer, the Director or the Board –

(a) any information requested in relation to its activities; and

(b) any documents or records as requested.

338A. Disclosure of information

(1) Except as required, or allowed, by this Act, another Act or any other law, a councillor must not disclose information –

- (a) seen or heard by the councillor at a meeting or part of a meeting of a council or council committee that is closed to the public that is not authorised by the council or council committee to be disclosed; or
- (b) given to the councillor by the mayor, deputy mayor, chairperson of a meeting of the council or council committee or the general manager on the condition that it be kept confidential.

Penalty: Fine not exceeding 50 penalty units.

(2) In addition to any penalty imposed under subsection (1), a court may make an order –

- (a) barring the councillor from nominating as a candidate at any election for a period not exceeding 7 years; or
- (b) dismissing the councillor.

(3) Except as required, or allowed, by this Act, another Act or any other law, a member or a member of an audit panel must not disclose information acquired as such a member on the condition that it be kept confidential.

Penalty: Fine not exceeding 50 penalty units.

(4) Except as required, or allowed, by this Act, another Act or any other law, an employee of a council, single authority or joint authority must not disclose information acquired as such an employee on the condition that it be kept confidential.

Penalty: Fine not exceeding 50 penalty units.

339. Improper use of information

(1) A councillor, a member or a member of an audit panel must not make improper use of any information acquired as a councillor, member or member of an audit panel.

Penalty: Fine not exceeding 50 penalty units.

(2) An employee of a council, single authority or joint authority must not make improper use of any information acquired as such an employee.

Penalty: Fine not exceeding 50 penalty units.

(3) Improper use of information includes using the information –

- (a) to gain, directly or indirectly, an advantage or to avoid, directly or indirectly, a disadvantage for oneself, a member of one's family or a close associate; or
- (b) to cause any loss or damage to any council, controlling authority, single authority, joint authority or person.

(4) In addition to any penalty imposed under this section, a court may make an order –

- (a) barring the councillor from nominating as a candidate at any election for a period not exceeding 7 years; or
- (b) dismissing the councillor, member or member of an audit panel from office.

339A. Misuse of office

(1) A councillor, an employee or a member must not procure the doing or not doing of anything by the council to gain, directly or indirectly, an advantage or to avoid, directly or indirectly, a disadvantage for –

- (a) the councillor, employee or member; or
- (b) a close associate of the councillor, employee or member; or

(c) a member of the councillor's, employee's or member's family.

Penalty: Fine not exceeding 50 penalty units.

(2) In addition to any penalty imposed under this section, a court may make an order –

(a) barring the councillor from nominating as a candidate at any election for a period not exceeding 7 years; or

(b) dismissing the councillor or member from office.

(3) In this section –

member includes a member of an audit panel.

339B. Offences relating to petitions

(1) A person must not include in, or delete from, a petition the name of another person without that other person's consent.

Penalty: Fine not exceeding 50 penalty units.

(2) A person must not include in a petition a statement knowing it to be false or misleading.

Penalty: Fine not exceeding 50 penalty units.

(3) A person must not make a statement knowing it to be false or misleading to induce or attempt to induce another person to sign a petition.

Penalty: Fine not exceeding 50 penalty units.

339C. Offence to perform functions or exercise powers of councillor

(1) A person specified in subsection (2) must not –

(a) perform any function or exercise any power of a councillor; or

(b) attempt to perform any function or exercise any power of a councillor.

Penalty: Fine not exceeding 50 penalty units.

(2) Subsection (1) applies to the following:

(a) a person who is not a councillor;

(b) a councillor who is suspended;

(c) a councillor who has not made the prescribed declaration of office.

339D. Obstruction

A person, without reasonable excuse, must not obstruct or attempt to obstruct an authorised person in the performance or exercise of his or her functions or powers under this Act.

Penalty: Fine not exceeding 50 penalty units.

339E. Complaints against non-compliance or offence

(1) A person may make a complaint to the Director –

(a) that a council, councillor or general manager has failed to comply with requirements under this or any other Act; or

(b) that a councillor, general manager or employee of a council may have committed an offence under this Act.

- (2) A complaint must –
 - (a) be in writing; and
 - (b) identify the complainant and the person against whom the complaint is made; and
 - (c) give particulars of the grounds of the complaint; and
 - (d) be verified by statutory declaration; and
 - (e) be lodged with the Director.
- (3) The Director may require a complainant to give further particulars of the complaint supported by a statutory declaration.
- (4) The Director may determine the procedure for handling complaints, including –
 - (a) the acceptance and rejection of complaints or any parts of a complaint; and
 - (b) whether or not an investigation is to be held and, if so, whether to investigate the whole or part only of the complaint; and
 - (c) the dismissal of complaints.
- (5) Without limiting the power of the Director under subsection (4) to determine the procedure for handling complaints, the Director may dismiss a complaint at any time after receiving it if the Director considers that the complaint is frivolous or vexatious.
- (6) If the Director rejects a complaint, the Director is to notify the complainant, in writing, of the rejection and the reasons for it.

339EA. Investigations of complaints and other matters

- (1) The Director may carry out an investigation in respect of a complaint received under section 339E .
- (2) The Director, without receiving a complaint under section 339E , may carry out an investigation in respect of –
 - (a) any matter which could be the subject of a complaint under section 339E ; or
 - (b) any other matter relating to compliance with, or the administration of, this Act.
- (3) The Director may determine the procedure for investigations.
- (4) The Director may provide any information obtained from the conduct of an investigation in respect of a complaint made under section 339E or any matter referred to in subsection (2) to such authority as he or she considers appropriate, including but not limited to –
 - (a) the Integrity Commission established by section 7 of the Integrity Commission Act 2009 ; and
 - (b) the Auditor-General; and
 - (c) a law enforcement agency within the meaning of the Personal Information Protection Act 2004 .

339F. Customer service charter

- (1) A council must adopt a customer service charter on or before 1 January 2006.
- (2) The customer service charter is to –
 - (a) specify the principles relating to services provided by the council; and
 - (b) specify a procedure for dealing with complaints relating to services provided by the council; and
 - (c) include any prescribed matter.
- (3) The general manager is to make the customer service charter available –
 - (a) for public inspection at the public office during ordinary office hours; and
 - (b) on the council's internet site free of charge; and

(c) for purchase at a reasonable charge.

(4) A council is to review its customer service charter at least once every 2 years.

(5) The general manager is to provide the council with a report at least once a year of the number and nature of complaints received.

340. Interference with records and documents

A person must not interfere with, alter, remove without reasonable excuse or destroy any record or document in the possession of, or under the control of, a council –

(a) without the approval of –

(i) the general manager; or

(ii) in the case of the general manager, the council; or

(b) contrary to the Archives Act 1983 .

Penalty: Fine not exceeding 50 penalty units.

340A. Allowances

(1) A councillor is entitled to prescribed allowances.

(2) A mayor and deputy mayor are entitled to prescribed allowances in addition to any allowances referred to in subsection (1) .

(2A) Allowances are to be paid in arrears.

(3) A councillor, mayor or deputy mayor may decide not to receive part or all of an allowance.

(4) A decision under subsection (3) is to be by written notice to the general manager of the relevant council.

(5) Councillors who are suspended under section 28ZI(2)(e) or section 215(5) are not entitled to any allowances during the period of suspension.

(6) A person who must not perform any function or exercise any power of a councillor under section 339C is not entitled to any allowances.

341. Immunity from liability

(1) A person who is –

(a) a councillor; or

(b) a member of the Board; or

(c) the Executive Officer; or

(d) a member of the Code of Conduct Panel or an audit panel; or

(e) a member of a Board of Inquiry; or

(f) a member of a special committee or a controlling authority; or

(g) a commissioner, or an employee, of a council –

does not incur any personal liability in respect of any act done or omitted to be done by the person in good faith in the performance or exercise, or the purported performance or purported exercise, of any function or power under this or any other Act or in the administration or execution, or purported administration or purported execution, of this Act.

(2) A liability that would, but for subsection (1) , lie against a councillor, an employee of the council, or a member of a special committee, an audit panel or a controlling authority, lies against the council which established the committee, panel or authority.

(3) A liability that would, but for subsection (1), lie against a member of the Board, the Executive Officer, a member of the Code of Conduct Panel, a member of a Board of Inquiry or a commissioner lies against the Crown.

342. Validity of proceedings, &c.

(1) Any act or proceeding of the Board, a council, council committee, controlling authority or any person acting under any direction of the Board, a council, council committee or controlling authority is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a councillor.

(2) An act or proceeding of the Board, a council, council committee, controlling authority or a person acting under the direction of the Board, a council, council committee or controlling authority is valid even if –

(a) the appointment of a member of the Board, council, council committee or controlling authority was defective; or

(b) a person appointed as a member of the Board, council or council committee was disqualified from acting as, or incapable of being, such a member.

343. Presumptions

In any proceedings by or against the Board, a council or council committee, unless evidence is given to the contrary, proof is not required of –

(a) the constitution of the Board, council or council committee; or

(b) any resolution of the Board, council or council committee; or

(c) the appointment or election of any member of the Board, council or council committee; or

(d) the presence of a quorum at any meeting of the Board, council or council committee.

344. Rounding off rates, &c.

(1) The general manager may round up any amount payable under this Act if–

(a) a ratepayer offers a cash payment in excess of that amount; and

(b) no change is available because the appropriate coins or notes are no longer in circulation.

(2) The general manager may, in a rates notice, round down any amount payable under this Act to an amount for which there is exact legal tender in circulation.

345. False and misleading statements

A person must not, in giving any information under this Act –

(a) make a statement knowing it to be false or misleading; or

(b) omit any matter from a statement knowing that without that matter the statement is misleading.

Penalty: Fine not exceeding 50 penalty units.

346.

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347. Exemption from fees

A council is exempted from the payment of any fees and charges in respect of –

(a) searches of any record or document relating to land in its municipal area; and

(b) copies of, and extracts from, any such record or document –

but this section does not affect the liability of a joint authority to which Part 3A applies to pay any such fee or charge.

348. Orders to be Statutory Rules

Any order made under this Act, including a rectification order made under section 109J , is a statutory rule within the meaning of the Rules Publication Act 1953 .

348A. References to Act

A reference to this Act includes a reference to any regulations, rules, by-laws and orders made under this Act.

349. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may apply, adopt or incorporate any provisions of a code, standard, guideline or rule relating to local government.
- (3) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (4) Regulations made under this section may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

349A. Savings and transitional provisions consequent on Local Government Amendment (Code of Conduct) Act 2015

The savings and transitional provisions set out in Schedule 8A have effect.

350. Repeal

The Acts specified in Schedule 9 are repealed.

350A. Validation, &c., of certain rates and charges

Schedule 10 has effect.

350B. Validation of certain rate notices

- (1) In this section –

introduction day means the day on which a bill entitled the *Local Government Amendment (Rates) Bill 2017* is presented to the House of Assembly;

rates notice has the same meaning as it has in Part 9 .

- (2) A rates notice issued, before the introduction day, in relation to land, is not to be taken to be invalid by reason only that –

(a) all or part of the land was land to which section 87(1)(b) , as in force immediately before the introduction day, applied; or

(b) part of the land was not within a municipal area.

- (3) Subsection (2) does not apply in relation to a rates notice issued to the Crown.

- (4) Subsection (2) does not affect any order or determination made by a court before this section comes into effect.

- (5) If –

(a) an instrument commencing proceedings in a court has been lodged with the court before the introduction day; and

(b) the proceedings relate to a claim that a rates notice was invalid for a reason referred to in subsection (2) –

the proceedings, and any proceedings for a review, or appeal, of a decision in relation to the proceedings, are to be dealt with and determined as if subsection (2) has not come into effect.

351. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Local Government; and
- (b) the Department responsible to the Minister for Local Government in relation to the administration of this Act is the Department of Environment and Land Management.

SCHEDULE 1 - Membership of Local Government Board

Section 4 (7)

1. Interpretation

In this Schedule –

appointed member means a general member or a review member;

general member means a member of the Board referred to in section 210(2)(a) , (b) or (c) who is appointed by the Minister under section 210(3) ;

review member means a member of the Board appointed under section 210(5A) .

2. Term and scope of office

(1) A general member is to be appointed for the period of not more than 3 years that is specified in the member's instrument of appointment.

(2) A review member is a member of the Board only in respect of the review specified in the member's instrument of appointment.

3. Holding other office

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office, is not disqualified from –

(a) holding that office and also the office of an appointed member; or

(b) accepting any remuneration payable to an appointed member.

4. Remuneration of members

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister and the member may agree.

5. Vacation of office

(1) An appointed member may resign from office by written notice addressed to the Minister.

(2) An appointed member vacates office if he or she –

(a) dies; or

(b) resigns; or

(c) is removed from office under subclause (3) , (4) or (5) .

(3) The Minister may remove an appointed member from office if the member –

(a) being a general member, is absent from 2 consecutive meetings of the Board without the permission of the Board; or

(ab) being a review member, is absent, without the permission of the Board, from 2 consecutive meetings of the Board that relate to the review for the purposes of which the member was appointed; or

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

(c) has been convicted, in Tasmania of any crime or offence punishable by imprisonment for 12 months or longer or elsewhere of any crime or offence which if committed in Tasmania would be punishable by imprisonment for 12 months or longer; or

(d) is convicted of an offence against this Act.

(4) The Minister may remove an appointed member from office if satisfied that the member is unable to perform adequately or competently the duties of office.

(5) The Minister may remove an appointed member from office if –

(a) the Minister is satisfied, having regard to the information supplied by the body which nominated that member, that the member is no longer qualified to be a member of the Board; or

(b) the Board recommends the removal of that member.

6. Filling of vacancies

(1) If the office of a general member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

(1A) If a review member vacates office, the Minister may appoint a person to the vacant office for the remainder of the review for the purposes of which the member was appointed.

(2) The Minister may appoint a suitable person to act as a substitute for a general member while that member –

(a) in respect of any matter that is subject to a review or advice to the Minister, is excluded from any discussion on that matter because of a declared interest; or

(b) is unable for any reason to perform the functions as such a member; or

(c) is absent for any reason.

SCHEDULE 2 - Meetings of Local Government Board

Section 4 (8)

1. Interpretation

In this Schedule, *member* means a member of the Board.

2. Procedure at meetings

- (1) The quorum at any meeting of the Board is 3 of the members of the Board referred to in section 210(2) .
- (2) A meeting of the Board may only transact business if there is a quorum present.
- (3) A question arising at a meeting of the Board is determined by a majority of votes of the members present and voting.

3. Chairperson

- (1) The chairperson of the Board is to preside at all meetings of the Board.
- (2) If the chairperson of the Board is not present at a meeting of the Board, the members present are to elect one of their number to preside at that meeting.
- (3) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

4. Disclosure of interest

- (1) A member is to disclose at a meeting of the Board any interest in a matter being considered by the Board.
- (2) A disclosure of interest is to be recorded in the minutes of the meeting of the Board.
- (3) Subject to subclause (4) , the member who made the disclosure must –
 - (a) not take part in any debate or vote in respect of the matter; and
 - (b) leave the meeting.
- (4) The Minister may allow a member to remain at a meeting if –
 - (a) the member is required to be present to make up a quorum; or
 - (b) the Minister considers that the interest disclosed by the member is too remote to influence the debate or vote.

5. General procedure

Subject to this Schedule, the procedure for the calling of, and for the conduct of business at, meetings of the Board are as determined by the Board.

SCHEDULE 2A - Membership of Code of Conduct Panel

Section 28K(4)

1. Interpretation

In this Schedule –

member means a member of the Code of Conduct Panel.

2. Term of office

(1) A member is to be appointed for a period of not more than 4 years that is specified in the member's instrument of appointment.

(2) If a member becomes a councillor or employee of a council, that member's appointment is terminated.

3. Holding other office

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office, is not disqualified from –

(a) holding that office and also the office of a member; or

(b) accepting any remuneration payable to an appointed member unless the holder's office is the office of a State Service officer or a State Service employee.

4. State Service Act

(1) A person may hold the office of a member in conjunction with the office of a State Service officer or a State Service employee.

(2) The State Service Act 2000 does not apply to a person referred to in subclause (1) in his or her capacity as a member.

5. Vacation of office

(1) A member may resign from office by written notice provided to the Minister.

(2) A member vacates office if he or she –

(a) dies; or

(b) resigns; or

(c) is removed from office under subclause (3) .

(3) The Minister may remove a member from office if –

(a) the Minister is satisfied that the member is no longer qualified to be a member of the Code of Conduct Panel; or

(b) the Minister is satisfied that the member is unable, because of absence, illness or any other reason, to perform adequately or completely the duties of the office of a member; or

(c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

(d) the member has been convicted in Tasmania of any offence punishable by imprisonment for a term of 12 months or longer or elsewhere of any offence which, if committed in Tasmania, would be punishable by imprisonment for a term of 12 months or longer; or

(e) the Minister is satisfied that the member is no longer a fit and proper person to be a member of the Code of Conduct Panel.

SCHEDULE 3 - Municipal Areas, Councils and Electoral Districts

Sections 16 (5) , 16 (6) , 17 (2) , 17 (3) , 18 (2) , 18 (4) , 25 (3) , 25 (4) and 45 (3)

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Municipal Areas	Council Names	No. of Councillors	Electoral Districts	No. of Councillors for each electoral district
Break O'Day CPR 2470	Break O'Day Council	9	...	...
Brighton CPR 2477	Brighton Council	9	...	...
Burnie CPR 2049	Burnie City Council	9	...	...
Central Coast CPR 2614	Central Coast Council	(a) 12 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect (b) 9 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect	...	...
Central Highlands CPR 2463	Central Highlands Council	9	...	...
Circular Head CPR 2465	Circular Head Council	9	...	...
Clarence CPR 2976	Clarence City Council	12 (a) 9 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2014 takes effect (b) 8 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2014 takes effect	...	...
Derwent Valley CPR 2481	Derwent Valley Council	12 (a) 9 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2014 takes effect (b) 8 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2014 takes effect	...	...
Devonport CPR 3658	Devonport City Council	12 (a) 12 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the	...	...

			Local Government (Number of Councillors) Order 2013 takes effect (b) 9 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect		
Dorset CPR 2484	Dorset Council		9	...	...
Flinders CPR 2978	Flinders Council		7 effective from October 2000	...	...
George Town CPR 10066	George Town Council		9	...	...
			(a) 9 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect (b) 8 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect (a) 12 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect (b) 10 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect		
Glamorgan-Spring Bay CPR 2473	Glamorgan-Spring Council	Bay		...	...
			(a) 12 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect (b) 10 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect		
Glenorchy CPR 2977	Glenorchy City Council			...	...
			(a) 12 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect (b) 10 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect		
Hobart CPR 2475	Hobart City Council		12	...	...
Huon Valley CPR 2469	Huon Valley Council		9	...	...
Kentish CPR 2979	Kentish Council		9	...	...
Kingborough CPR 2478	Kingborough Council		(a) 12 until immediately before	...	...

			the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect		
			(b) 10 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect		
King Island CPR 1790	King Island Council		9	...	...
Latrobe CPR 3657	Latrobe Council		9	...	...
Launceston CPR 10067	Launceston City Council		12	...	...
Meander Valley CPR 2467	Meander Valley Council		9	...	...
Northern Midlands CPR 2482	Northern Midlands Council		9	...	...
Sorell CPR 3510	Sorell Council		(a) 11 following election due in March 1999	...	...
			(b) 9 following election due in October 2000		
			(a) 9 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2014 takes effect		
Southern Midlands CPR 2486	Southern Midlands Council		(b) 7 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2014 takes effect	...	...
			(a) 9 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2014 takes effect		
Tasman CPR 2981	Tasman Council		(b) 7 on and after the day on which the certificate of election is issued in respect	...	...

Waratah-Wynyard CPR 2488	Waratah-Wynyard Council	of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2013 takes effect (a) 10 until immediately before the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2014 takes effect (b) 8 on and after the day on which the certificate of election is issued in respect of the next ordinary election held after the day on which the Local Government (Number of Councillors) Order 2014 takes effect	...	...
West Coast CPR 2489 West Tamar CPR 2982	West Coast Council West Tamar Council	9 9	......	......

SCHEDULE 3A

SCHEDULE 3B - Cities

Section 16A

Column 1	Column 2	Column 3
Municipal area	Name of city	Plan
1. Burnie	Burnie City	CPR 2049
2. Clarence	Clarence City	CPR 2976
3. Devonport	Devonport City	CPR 3658
4. Glenorchy	Glenorchy City	CPR 2977
5. Hobart	Hobart City	CPR 2475
6. Launceston	Launceston City	CPR 10067

SCHEDULE 4

SCHEDULE 5 - Office of Councillors

Sections 25 (5) , 29 (2)

1. Expenses

- (1) A council, on or before 1 January 2006, is to –
- (a) adopt a policy in respect of payment of expenses incurred by councillors in carrying out the duties of office; and
 - (b) make a copy of the policy available for public inspection.
- (2) A councillor is entitled to be reimbursed for reasonable expenses in accordance with the policy adopted under subclause (1) in relation to –
- (a) any prescribed expenses; and
 - (b) any other expenses the council determines appropriate.

2. Loan of services, facilities and equipment

A council may decide to provide support services, facilities and equipment on loan to a councillor on any conditions it considers appropriate.

3. Vacation of office

- (1) The office of a councillor becomes vacant if the councillor –
- (a) dies; or
 - (b) resigns; or
 - (c) is absent without leave from 3 consecutive ordinary meetings of the council; or
 - (d) is removed or dismissed from office under this Act; or
 - (e) becomes a paid employee of the council; or
 - (ea) is, on the day on which he or she begins to hold that office, a member of the Legislative Council, or the House of Assembly, and is such a member for 30 days continuously during that term of office of the councillor; or
 - (eb) becomes, after the day on which he or she begins to hold that office, a member of the Legislative Council, or the House of Assembly, and is such a member for 12 months continuously during that term of office as a councillor; or
 - (f) is no longer eligible to nominate as a candidate under section 270 .
- (1A) Despite subclause (1)(f) , if –
- (a) a councillor is no longer eligible to nominate as a candidate under section 270 because the councillor ceases to be entitled under section 254(1) to be enrolled on the electoral roll kept under section 258(7) for an electoral district of the electoral area in respect of which he or she is a councillor; and
 - (b) the councillor is entitled, by reason of section 254(2) , to be enrolled on the electoral roll kept under section 258(1) in respect of that electoral area –

the councillor does not vacate the office of councillor on so ceasing to be eligible to nominate as a candidate under section 270 but, subject to subclause (1B) , vacates the office at the end of the thirtieth day after ceasing to be eligible to so nominate unless the councillor lodges an electoral enrolment form under section 257 within that 30-day period.

(1B) Despite subclause (1)(f) , if a councillor referred to in subclause (1A) lodges an electoral enrolment form under section 257 before the end of the thirtieth day specified in that subclause, the councillor does

not vacate the office of councillor.

(2) If the general manager becomes aware of a vacancy, the general manager is to notify the Electoral Commissioner.

SCHEDULE 6 - Ballot Papers

Section 288

PART 1 - Mayoral or Councillor Elections

Form

BALLOT PAPER

Tasmania

.....
(Name of council)

.....
(Name of electoral district if applicable)

Election of
(Insert Lord Mayor, mayor, Deputy Lord Mayor, deputy mayor or councillor)

Number the boxes from 1 to in order of your choice
(Insert number of candidates)

.....
(Name of candidate)

.....
(Name of candidate)

.....
(Name of candidate)

Number at least one box to make your vote count

PART 2 - Councillor Elections

Form

BALLOT PAPER

Tasmania

.....
(Name of council)

.....
(Name of electoral district if applicable)

Election of councillors
(Insert number of councillors)

Number the boxes from 1 to in order of your choice
(Insert number of candidates)

.....
(Name of candidate)

.....
(Name of candidate)

.....
(Name of candidate)

Number at least..... boxes to make your vote count
(Number of councillors to be elected)

SCHEDULE 7 - Counting of Votes

Sections 299 and 301

PART 1 - General

1. Interpretation

(1) In this Schedule –

absolute majority of votes, in relation to a candidate, is a number of votes which is greater than one-half of the total number of ballot papers, other than exhausted and informal ballot papers, on which electors have recorded their votes for the candidate;

informal ballot paper means a ballot paper which is informal as specified in section 300 ;

quota means the number of votes sufficient to elect a candidate;

second preference recorded for a candidate means the preference on a ballot paper recorded by the number "2" in the square opposite the name of the candidate on the ballot paper;

surplus means the number of votes which a candidate obtained at any stage of the counting of votes in excess of the quota;

transfer value means that portion of a vote which is unused by –

(a) an elected candidate who has obtained a surplus; or

(b) a candidate excluded on account of being lowest on the poll and which is transferred to the candidate next in the order of the elector's preference.

(2) For the purpose of the definition of "transfer value", the transfer value is either one or a fraction of one.

PART 2 - Mayoral or Councillor Elections

2. First preferences

(1) The number of first preferences recorded for each candidate is to be counted and all informal ballot papers are to be rejected.

(2) The candidate who obtains an absolute majority of votes is to be elected.

3. Second and subsequent preferences

(1) If no candidate has an absolute majority of votes, the candidate who has the fewest votes is to be excluded and each ballot paper counted to that candidate, unless exhausted, is to be counted to the unexcluded candidate next in the order of the elector's preference.

(2) The process specified in subclause (1) is to be repeated until one candidate has an absolute majority of votes.

4. Ballot paper counted and exhausted

(1) Every ballot paper, not rejected as informal, is to be counted in every count until it becomes exhausted, when it is to be rejected in all further counts.

(2) If a candidate is excluded, any ballot paper counted to the candidate is exhausted if there is not indicated on it a consecutive preference for one or more unexcluded candidates.

5. Returning officer to decide exclusion and election

(1) If, on any count, 2 or more candidates have an equal number of votes and one of them has to be excluded, the returning officer is to decide which candidate is to be excluded by the drawing or casting of lots in the prescribed manner.

(2) If in the final count, 2 candidates have an equal number of votes, the returning officer is to decide which of them is to be elected by the drawing or casting of lots in the prescribed manner.

PART 3 - Councillor Elections

6. Quota

(1) The quota is calculated in accordance with the following formula:

$$Q = \frac{FP}{C + 1} + 1$$

where –

Q is the quota;

FP is the total number of first preferences;

C is the total number of candidates to be elected.

(2) Any remainder in calculating the quota is to be disregarded.

(3) Subject to clause 13 (6) , a candidate is not to be elected until the candidate obtains a number of votes equal to or greater than the quota.

7. First preferences

(1) The number of first preferences recorded for each candidate is to be counted and all informal ballot papers are to be rejected.

(2)

(3) A candidate who, after the first preferences have been counted, has a number of preferences equal to or greater than the quota, is to be elected.

8. First preferences equal to quota

If the number of first preferences obtained by a candidate is equal to the quota, all the ballot papers on which a first preference is recorded for that candidate are to be set aside as finally dealt with.

9. First preferences in excess of quota

If the number of first preferences obtained by a candidate exceeds the quota, the proportion of those preferences in excess of the quota is to be transferred to the other candidates not yet elected next in the order of the electors' respective preferences in the following manner:

(a) all the ballot papers on which a first preference is recorded for the elected candidate are to be re-examined and the number of second preferences, or in the case provided for in clause 10 , third or next consecutive preferences, recorded for each unelected candidate are to be counted.

(b) the surplus of the elected candidate is to be divided by the total number of votes obtained by the candidate on the counting of the first preferences and the resulting fraction is the transfer value;

(c) the number of second or other preferences recorded for each unelected candidate is to be multiplied by the transfer value;

(d) the resulting number of votes, truncated to 2 decimal places, is to be transferred to each unelected candidate and added to the number of votes obtained by the candidate on the counting of the first preferences.

10. Surplus

(1) If, on the counting of the first preferences or on a transfer, more than one candidate has a surplus, the largest surplus is to be dealt with first.

- (2) If at that stage more than one candidate has a surplus, the then largest surplus is to be dealt with next, and so on.
- (3) If one candidate has obtained a surplus at a count or transfer previous to that at which another candidate obtains a surplus, the surplus of the former is to be dealt with first.
- (4) If 2 or more surpluses are equal, the surplus of the candidate who was the highest at the count or transfer at which they last had an unequal number of votes is to be dealt with first.
- (5) If the 2 or more candidates had an equal number of votes at all preceding counts or transfers, the returning officer is to decide which candidate's surplus is to be dealt with first.

11. Quota by transfer

- (1) If the number of votes obtained by a candidate is increased to a number which is equal to, or exceeds, the quota by a transfer, the candidate is to be elected.
- (2) Notwithstanding the fact that the candidate has reached the quota, the transfer is to be completed and all the votes to which the candidate is entitled from the transfer are to be transferred to the candidate, but no votes of any other candidate are to be transferred to the candidate.
- (3) If the number of votes obtained by a candidate is increased by a transfer to a number which is equal to the quota, all of the ballot papers on which the votes are recorded are to be set aside as finally dealt with.
- (4) If the number of votes obtained by a candidate is increased by a transfer to a number which exceeds the quota, the surplus is to be transferred to the candidates next in the order of the voters' respective preferences, in the following manner:
 - (a) the ballot papers on which are recorded the votes obtained by the elected candidate in the last transfer are to be re-examined and the number of third preferences, or in the case provided for in clause 10, next consecutive preferences, recorded for each unelected candidate counted;
 - (b) the surplus of the elected candidate is to be divided by the total number of ballot papers mentioned in paragraph (a) and the resulting fraction is the transfer value;
 - (c) the number of third or other preferences recorded for each unelected candidate is to be multiplied by the transfer value;
 - (d) the resulting number, truncated to 2 decimal places, is to be credited to each unelected candidate and added to the number of votes previously obtained by the candidate.

12. Transfer of votes

- (1) If, after the first preferences have been counted and any surplus has been transferred, no candidate, or less than the number of candidates required to be elected, has obtained the quota –
 - (a) the candidate who at that time, has the least number of first preference votes transferred is to be excluded; and
 - (b) all the votes obtained by that candidate are to be transferred to the candidates next in the order of the electors' respective preferences in the same manner as provided by clause 4.
- (2) The votes received by the excluded candidate are to be sorted into groups according to their transfer values when received by that candidate.
- (3) The groups are to be transferred at the transfer value at which they were received in the following order:
 - (a) firstly, the group with the highest transfer value;
 - (b) secondly, the remaining groups in descending order of transfer value.
- (4) Each transfer under subclause (3) is a separate transfer.

13. Votes increased by transfer

- (1) If the number of votes obtained by a candidate by a transfer is increased to a number which is equal to, or exceeds, the quota the candidate is to be elected.
- (2) Notwithstanding that the candidate has reached the quota, the transfer is to be completed and all the votes to which the candidate is entitled from the transfer are to be transferred to the candidate, but no other votes are to be transferred.
- (3) If the number of votes obtained by a candidate is increased by a transfer to a number of votes which is equal to, but does not exceed, the quota, all the ballot papers on which those votes are recorded are to be set aside as finally dealt with.
- (4) If the number of votes obtained by a candidate is increased by a transfer to a number which exceeds the quota, the surplus is to be transferred to the candidates next in the order of the electors' respective preferences in the same manner as provided by clause 11 (4) , but that surplus is not to be dealt with until all the votes of the excluded candidate have been transferred.
- (5) If there is a surplus, it is to be dealt with before any other candidate is excluded.
- (6) The process of excluding the candidate who has polled the next lowest number of votes and transferring the vote to other candidates is to be repeated until all the candidates, except the number required to be elected, have been excluded and the unexcluded candidates who have not already been elected are then elected.

14. Order of preference

In determining which candidate is next in the order of an elector's preference –

- (a) any candidate who has been elected or excluded is not to be considered; and
- (b) the order of the elector's preference is to be determined as if the names of those candidates had not been on the ballot paper.

15. Exclusion of candidates

- (1) If it is necessary to exclude a candidate, and 2 or more candidates have an equal number of votes, having at that time the least number of first preference votes transferred to them, whichever of those candidates was the lowest on the poll at the last count or transfer at which they had an unequal number of votes is excluded first.
- (2) If the candidates had an equal number of votes at all preceding counts or transfers, the returning officer is to decide which candidate is to be excluded first by the drawing or casting of lots in the prescribed manner.

16. Exhausted ballot paper

If, on a transfer, it is found that on a ballot paper there is no candidate opposite whose name a number is placed, other than a candidate whose name has already been elected or excluded, the ballot paper is to be set aside as exhausted.

17. Order of election

- (1) The order of election of councillors is the order in which the candidates receive a quota.
- (2) If more than one candidate receives a quota at the same count or transfer, the candidate with the highest number of votes is elected first, the candidate with the next highest number of votes is elected second and so on.
- (3) If under clause 13(6) one candidate is elected without a quota, that candidate is elected last.
- (4) If under clause 13(6) more than one candidate is elected without a quota and it is necessary to determine the order of election of those candidates for any reason, the votes received by the remaining unelected candidates are to be distributed until only one candidate has received less than a quota.

SCHEDULE 8 - Recount to Fill a Casual Vacancy

Section 307

PART 1 - General

1. Interpretation

In this Schedule –

completed ballot papers counted means –

(a) if, after the first preferences were counted at the relevant election, the number of first preferences recorded for the vacating councillor was equal to or exceeded the quota, all the ballot papers on which those first preferences were recorded; and

(b) in any other case, all the ballot papers counted for that councillor at the time of that councillor's election, including ballot papers relating to votes that were transferred to the councillor;

consenting candidate means a candidate not elected at the relevant election who consents to be included in a recount for a vacancy;

consent period means the period within which a consent form is to be lodged under section 307(5) ;

relevant election means the election last held to fill the office of the vacating councillor;

quota means the number of votes sufficient to elect a candidate;

vacating councillor means a councillor who is vacating the office of councillor.

PART 2 - Original Election Was For More Than One Councillor

2. One consenting candidate

If there is only one consenting candidate, the Electoral Commissioner is to—

- (a) declare the candidate elected; and
- (b) notify the Minister in writing of the election of the candidate.

3. More than one consenting candidate

If there are 2 or more consenting candidates, the Electoral Commissioner, within 7 days after the end of the consent period, is to ascertain in accordance with this Schedule which consenting candidate is to be elected.

4. Transfer of votes

(1) If—

(a) a vacating councillor was, by virtue of clause 13 (6) of Schedule 7, elected at the relevant election after the candidate who was lowest on the poll at that election had been excluded from the counting; and

(b) the votes obtained by the excluded candidate were not required to be transferred to the candidates next in the order of the electors' preferences—

so many of those votes as would have been transferred to that vacating councillor, if the votes of the excluded candidate had been transferred to the candidates next in the order of the electors' representative preferences, are taken to have been so transferred to, and to be obtained by, that vacating councillor and the completed ballot papers representing those votes are to be counted for that councillor.

(2) The ballot papers counted for the vacating councillor are to be examined, and all the votes obtained by the councillor are to be transferred to and counted for the consenting candidates first or next in the order of the electors' respective preferences.

(3) The votes received by the vacating councillor as first preferences are to be transferred at the transfer value as determined under subclause (5).

(4) The other votes received by the vacating councillor that are not first preferences are to be transferred at the transfer value as determined under subclause (6).

(4A) All the votes received by the vacating councillor are to be—

(a) sorted into groups according to their transfer values; and

(b) transferred in the following order:

(i) firstly, the group with the highest transfer value;

(ii) secondly, the remaining groups in descending order of transfer value.

(5) If the votes obtained as first preferences by the vacating councillor—

(a) were sufficient to elect the councillor, the transfer value of those votes is the fraction determined by dividing the number of votes sufficient to elect the councillor by the total number of votes obtained by the councillor; or

(b) were insufficient to elect the councillor, the transfer value of those votes is one.

(6) If the number of votes obtained by the vacating councillor at an individual count, other than the votes obtained as first preferences—

(a) were not sufficient to elect the councillor, the transfer value of the votes obtained on that count is that at which they were obtained by the councillor; or

(b) were sufficient to elect the councillor, the transfer value of the votes received at that count is that which would have been sufficient to elect the councillor immediately before that count.

(7) Each transfer under subclause (4A) is a separate transfer.

5. Counting of votes

(1) After the number of votes for each consenting candidate has been ascertained, the method of counting votes set out in Part 2 or 3 of Schedule 7 applies with the necessary modifications.

(2) The Electoral Commissioner is to declare the consenting candidate who obtains an absolute majority of the votes within the meaning of that Schedule to be elected.

(3) As soon as practicable after declaring a consenting candidate to be elected, the Electoral Commissioner is to notify the Minister in writing of the election of the candidate.

6. Exclusion of candidate

(1) If it is necessary to exclude a consenting candidate, and 2 or more consenting candidates have an equal number of votes and are lowest on the poll, whichever of those candidates was lowest on the poll at the last count or transfer at which they had an unequal number of votes is excluded first.

(2) If the candidates had an equal number of votes at all preceding counts or transfers, the returning officer is to decide which consenting candidate is to be excluded first.

7. Previous election under Schedule

If a vacating councillor was elected under the provisions of this Schedule, the Electoral Commissioner is to—

(a) examine the ballot papers that at the relevant election were counted for the councillor in whose place the vacating councillor was elected (including votes transferred to the last-mentioned councillor); and

(b) ascertain which consenting candidate is to be elected in accordance with this Schedule.

8. Order of preferences

To determine which consenting candidate is first or next in the order of the electors' preferences –

(a) the name of, and the first preferences recorded at the relevant election for, an excluded candidate who is a consenting candidate is not to be omitted from any completed ballot papers transferred to the vacating councillor, but is to be counted for that consenting candidate; and

(b) any candidates who were elected at the relevant election or who are not consenting candidates are to be disregarded and the order of the electors' preferences are to be determined as if the names of those candidates had not been included on the ballot papers.

9. Ballot papers exhausted

A complete ballot paper is exhausted if there is no candidate next to whose name a number has been placed other than a candidate –

(a) who has already been elected; or

(b) who is not a consenting candidate.

PART 3

.....

SCHEDULE 8A - Savings and Transitional Provisions Consequent on Local Government Amendment (Code of Conduct) Act 2015

Section 349A

1. Interpretation

(1) In this Schedule –

commencement day means the day on which the Local Government Amendment (Code of Conduct) Act 2015 commences;

new Act means this Act as in force on and after the commencement day;

previous Act means this Act as in force immediately before the commencement day;

previous Code of Conduct Panel means a Code of Conduct Panel as defined in the previous Act;

previous Regulations means –

(a) if the Local Government (General) Regulations 2005 are in force immediately before the commencement day, those regulations as in force immediately before that day; or

(b) if the Local Government (General) Regulations 2015 are in force immediately before the commencement day, those regulations as in force immediately before that day;

Standards Panel means a Standards Panel as defined in the previous Act.

(2) A reference in this Schedule to regulation 22C of the previous Regulations is a reference to –

(a) regulation 22C of the Local Government (General) Regulations 2005 ; or

(b) the regulation in the Local Government (General) Regulations 2015 that substantially corresponds to that regulation 22C –

as appropriate, and a reference to the application of the previous Regulations in relation to that regulation is a reference to the Local Government (General) Regulations 2005 or the Local Government (General) Regulations 2015 , also as appropriate.

2. Code of conduct

On and after the commencement day until a council adopts the model code of conduct under section 28T , the code of conduct of the council that was in force under the previous Act immediately before the commencement day continues in force and is taken to be the council's code of conduct within the meaning of this Act.

3. Complaints under previous Act

(1) If –

(a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; but

(b) immediately before the commencement day, the mayor or deputy mayor has not, under regulation 22C of the previous Regulations, notified the councillor against whom the complaint is made of the complaint –

the complaint is to be dealt with, investigated and determined as a code of conduct complaint under the new Act.

(2) If –

(a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act and the mayor or deputy mayor has, under regulation 22C of the previous Regulations, notified the councillor against whom the complaint is made of the complaint; but

(b) the 7-day period within which, under regulation 22C of the previous Regulations, the councillor may lodge an election to have the complaint referred to the Local Government Association of Tasmania to be dealt with by a Standards Panel has not expired –

the previous Act and previous Regulations continue to apply in relation to the complaint until the end of that 7-day period.

(3) If –

(a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; and

(b) the councillor, either before the commencement day or as allowed by subclause (2) and under regulation 22C of the previous Regulations, has lodged an election to have the complaint referred to the Local Government Association of Tasmania to be dealt with by a Standards Panel –

the previous Act and previous Regulations continue to apply in relation to the complaint, its hearing and a determination.

(4) If –

(a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; and

(b) the councillor, either before the commencement day or as allowed by subclause (2) and under regulation 22C of the previous Regulations, has not lodged an election to have the complaint referred to the Local Government Association of Tasmania to be dealt with by a Standards Panel; and

(c) the mayor or deputy mayor has not referred the complaint to a previous Code of Conduct Panel –

the complaint is to be dealt with as a code of conduct complaint under the new Act.

(5) If –

(a) before the commencement day, a complaint against a councillor is made under section 28F of the previous Act; and

(b) the councillor, either before the commencement day or as allowed by subclause (2) and under regulation 22C of the previous Regulations, has not lodged an election to have the complaint referred to the Local Government Association of Tasmania to be dealt with by a Standards Panel; and

(c) the mayor or deputy mayor has referred the complaint to a previous Code of Conduct Panel –

the previous Act and previous Regulations continue to apply in relation to the complaint, its hearing and determination and in relation to an appeal made under section 28F of the previous Act against the decision of the previous Code of Conduct Panel.

4. Continuation of, and termination of membership of, previous Code of Conduct Panel

(1) At any time on or after the commencement day, a council is to terminate the appointments of the members of its previous Code of Conduct Panel once the council is satisfied that the Panel will not be required, by reason of clause 3 , to deal with, hear and determine a complaint made under section 28F of the previous Act.

(2) On and after the commencement day until the appointment of a member of a previous Code of Conduct Panel that was in force immediately before the commencement day is terminated under subclause (1) , that appointment continues and for that purpose the previous Act applies to that appointment.

(3) If, on or after the commencement day, a previous Code of Conduct Panel is required, by reason of clause 3 , to deal with, hear and determine a complaint made under section 28F of the previous Act and it is necessary to appoint a new member to the Panel, the previous Act continues to apply –

(a) so as to allow the appointment of the new member to the Code of Conduct Panel; and

(b) to the appointment of the new member until the appointment is terminated under subclause (1) .

(4) A member of the previous Code of Conduct Panel is not entitled to receive any benefit in respect of the termination of his or her appointment as such a member under subclause (1) .

5. Continuation of, and termination of membership of, Standards Panel

(1) At any time on or after the commencement day, the Local Government Association of Tasmania is to terminate the appointments of the members of its Standards Panel once that Association is satisfied that the Panel will not be required, by reason of clause 3 , to deal with, hear and determine –

(a) a complaint made under section 28F of the previous Act; or

(b) an appeal against the determination of such a complaint by a previous Code of Conduct Panel.

(2) On and after the commencement day until the appointment of a member of a Standards Panel that was in force immediately before the commencement day is terminated under subclause (1) , that appointment continues and for that purpose the previous Act applies to that appointment.

(3) If, on or after the commencement day, the Standards Panel is required, by reason of clause 3 , to deal with, hear and determine a complaint under section 28F of the previous Act or an appeal against the determination of such a complaint by a previous Code of Conduct Panel and it is necessary to convene the Standards Panel or appoint new members to the Standards Panel, the previous Act continues to apply –

(a) so as to allow the convening of the Standards Panel and the appointments of members, or new members, to the Standards Panel; and

(b) to the appointment of each of those members and new members until the appointment is terminated under subclause (1) .

(4) A member of a Standards Panel is not entitled to receive any benefit in respect of the termination of his or her appointment as such a member under subclause (1) .

SCHEDULE 9 - Repeals

Section 350

Hobart Corporation Act 1963 (No. 81 of 1963)
Hobart Corporation Act 1976 (No. 39 of 1976)
Hobart Corporation Act 1977 (No. 26 of 1977)
Hobart Corporation Amendment Act 1990 (No. 10 of 1990)
Launceston Corporation Act 1963 (No. 82 of 1963)
Local Government Act 1962 (No. 67 of 1962)
Local Government Amendment (Administrative Amendments) Act 1983 (No. 91 of 1983)
Local Government Amendment (Building Regulations Board) Act 1985 (No. 80 of 1985)
Local Government Amendment (Crown Lands) Act 1989 (No. 1 of 1989)
Local Government Amendment (Development and Building) Act 1985 (No. 91 of 1985)
Local Government Amendment (Elections) Act 1992 (No. 56 of 1992)
Local Government Amendment (Health Surveyors) Act 1984 (No. 83 of 1984)
Local Government Amendment (Local Government Advisory Board) Act 1987 (No. 29 of 1987)
Local Government Amendment (Local Government Advisory Board) Amendment Act 1991 (No. 18 of 1991)
Local Government Amendment (Master Planning Authorities) Act 1984 (No. 46 of 1984)
Local Government Amendment (Municipal Association) Act 1990 (No. 51 of 1990)
Local Government Amendment (Municipal Caravan Parks and Camping Grounds) Act 1982 (No. 76 of 1982)
Local Government Amendment (Municipal Elections) Act 1991 (No. 32 of 1991)
Local Government Amendment (Planning and Development) Act 1990 (No. 50 of 1990)
Local Government Amendment (Planning Fees) Act 1990 (No. 36 of 1990)
Local Government Amendment (Rates and Charges) Act 1985 (No. 28 of 1985)
Local Government (City of Launceston Reorganization) Act 1985 (No. 29 of 1985)
Local Government (Municipality of Lyell) Act 1986 (No. 28 of 1986)
Local Government Amendment (Building and Plumbing) Act 1993 (No. 37 of 1993)

SCHEDULE 10 - Validation

Section 350A

1. Interpretation of Schedule 10

In this Schedule –

charge means a charge made under Part 9 ;

introduction day means the day on which a bill entitled the *Local Government Amendment Bill (No.2) 2011* is presented to the House of Assembly;

rate means a general rate, a separate rate, a construction rate, or a service rate, each within the meaning of Part 9 ;

rates notice has the same meaning as it has in Part 9 .

2. Validation of certain rates and charges

(1) A rate or charge made, or purportedly made, under Part 9 on a day ("**the relevant day**") before the introduction day is to be taken to have been validly made on the relevant day, and to have always been validly made on the relevant day, under this Act.

(2) A variation, of a rate or charge, made, or purportedly made, under section 94(3) , section 94(3A) , section 106A(1) or section 107 on a day ("**the relevant day**") before the introduction day is to be taken to have been validly made on the relevant day, and to have always been validly made on the relevant day, under this Act.

(3) A minimum amount payable set, or purportedly set, under section 90(4) , section 93(3) or section 107 on a day ("**the relevant day**") before the introduction day is to be taken to have been validly set on the relevant day, and to have always been validly set on the relevant day, under this Act.

(4) If, on a day ("**the relevant day**") before the introduction day, a council purported to vary under section 107 a minimum amount payable set, or purportedly set, under section 90(4) , section 93(3) or section 107 , the minimum amount as so varied is to be taken to have been validly set on the relevant day, and to have always been validly set on the relevant day, under this Act.

3. Effect of validation on current proceedings, &c.

(1) In this clause, a reference to the relevant proceedings, in relation to a council, is a reference to proceedings, in a court, relating to a decision of the council, if –

(a) the proceedings include or involve a relevant claim; and

(b) an instrument commencing the proceedings in the court has been lodged with the court before the introduction day –

whether or not the proceedings have been determined by the court.

(2) A relevant claim is a claim to the effect that –

(a) a rate or a charge made, or purportedly made, under Part 9 was invalidly made or the making of it was attended by legal error or in any event was unauthorised by law; or

(b) a variation, of a rate or charge, made, or purportedly made, under section 94(3) , section 94(3A) , section 106A(1) or section 107 , was invalidly made or the making of it was attended by legal error or in any event was unauthorised by law; or

(c) a minimum amount payable set, or purportedly set, under section 90(4) , section 93(3) or section 107 was invalidly set or the setting of it was attended by legal error or in any event was unauthorised by law; or

(d) a variation made, or purportedly made, under section 107 , of a minimum amount payable set, or purportedly set, under section 90(4) , section 93(3) or section 107 , was invalidly made or the making of it was attended by legal error or in any event was unauthorised by law.

(3) Clause 2 does not affect any order or determination made by a court before that clause comes into effect.

(4) If relevant proceedings in relation to a council are not finally determined before clause 2 comes into effect, the proceedings, and any proceedings for a review, or appeal, of a decision in relation to such proceedings, are to be dealt with and determined as if that clause had not come into effect.

(5) A council may not, after this subclause comes into effect, issue, in relation to the particular rateable land to which relevant proceedings relate, a rates notice in relation to a rate or charge in respect of the 2011-2012 financial year, or any preceding financial year, if the rate or charge could not, but for clause 2 , be imposed in respect of the rateable land.